Petition

81-409

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IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1981

No.

MICHAEL N. CANLIS, Sheriff-Coroner,
County of San Joaquin, et al.,

Petitioners,

vs.

SAN JOAQUIN SHERIFF'S POSSE COMITATUS, et al.,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether nonfederal officers injured as a direct and proximate result of a civil rights conspiracy to obstruct federal officers enjoy the benefits and protections of 42 U.S.C. §1985(1).

2. Whether innocent bystanders and other individuals not targets or objects of a proscribed conspiracy under 42 U.S.C. 1985(3) may have an action for the recovery of damages sustained as a direct and proximate result of such conspiracy.

* * * *

NOTE: As set forth more fully infra, your petitioners are MICHAEL N. CANLIS, Sheriff-Coroner of the County of San Joaquin; SAN JOAQUIN SHERIFF'S BENEFIT ASSOCIATION; RODNEY BROWN; DANIEL FOUTS; CARL AMBROSE; GERALD KRIEN; KEN WAGNER; JOHN LaFAVE; JOHN McGAUGHEY; ERNEST RODRIGUEZ; CLIFF WEAVER; and DALE MAYER.

Respondents in this action are SAN JOAQUIN SHERIFF'S POSSE COMITATUS; FRANCIS GILLINGS; NORMAN BROWN; GEORGE HILL; STEVEN GILLINGS; MICHAEL EUGENE BROWN; LEWIS DANIEL ELAM; FRANK RAY; RUFUS SHACKELFORD; WESTERN TOMATO GROWERS AND SHIPPERS, INC.; and STOCKTON TOMATO COMPANY, INC.

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Petitioners respectfully request the Supreme Court to review the Decision of the Ninth Circuit Court of Appeals, which affirmed a memorandum Decision of the United States District Court for the Eastern District of California dismissing this action for failure to state a claim.

OPINIONS BELOW

The memorandum Decision of the United States District Court for the Eastern District of California (App.A, infra) was filed on April 6, 1981, and became final after the denial of your petitioners' Petition for Rehearing and Suggestion for Rehearing en Banc (App.C, infra) on May 28, 1981. The Ninth Circuit decision is reported at 641 F.2d 711.

JURISDICTION

The jurisdiction of the United States Supreme Court is invoked under the statutory provisions for Petition for Certiorari. The judgment and decrees are those of the United States District Court for the Eastern District of California (unreported), filed on August 1, 1978, and the United States Court of Appeals for the Ninth Circuit, Canlis v. San Joaquin Sheriff's Posse Comitatus, 641 F.2d 711 (1981), filed on April 6, 1981.

The Petition for Rehearing and Suggestion for Rehearing en Banc was denied by the Ninth Circuit on May 28, 1981. Time runs for this Petition on August 26, 1981.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether nonfederal officers injured as a direct and proximate result of a civil rights conspiracy to obstruct

federal officers enjoy the benefits and protections of 42 U.S.C. §1985(1).

2. Whether innocent bystanders and other individuals not targets or objects of a proscribed conspiracy under 42 U.S.C. 1985(3) may have an action for the recovery of damages sustained as a direct and proximate result of said conspiracy.

CONSTITUTIONAL PROVISIONS AND STATUTES

The relevant constitutional provisions and statutes are: U.S. Const. Amend. XIV, and 42 U.S.C. §§1983, 1985(1) and (3), and 1988, all of which are set forth seriatim in Appendix F.

STATEMENT OF THE CASE

I

INTRODUCTION

This action was brought under provisions of the Civil Rights Act of 1871, 42 U.S.C. §§1983, 1985(1) and 1985(3) by individual members of varying rank of the San Joaquin County Sheriff's Office, and by the San Joaquin Sheriff's Benefit Association, the recognized employee organization for employees of the San Joaquin County Sheriff's Office, against a group of San Joaquin Valley Growers (and individuals associated with them) organized as the San Joaquin Sheriff's Posse Comitatus (hereinafter "Posse Comitatus").

In an attempt to hinder the lawful organizing activities of the United Farm Workers in 1975, the Posse Comitatus conspired to threaten, intimidate and coerce officers of the law, including federal officers, in the course of their performance of official duties. In furtherance of this conspiracy, the Posse Comitatus did, in fact, threaten federal officers and other local agents and disguise themselves as law enforcement officers. As a result, your petitioners were prevented from performing their official duties as Deputy Sheriffs of the San Joaquin Sheriff's Department, and were assaulted, battered and slandered by the Posse Comitatus, who throughout this period purported to be acting as a sheriff's posse under the laws of the State of California.

Petitioners believe that immediate review of the issues raised herein is important to the national interest at this particular time in our history, when the forces of organized terrorism, vigilante justice and urban crime are claiming more and more innocent victims. The Ninth Circuit decision, if it is allowed to stand, will severely limit those victims' access to federal courts, thus depriving them of a forum which has long been recognized as an element essential to an ordered concept of protected rights and liberties. It is not only necessary for this Court to determine whether

and to what extent innocent bystanders and individuals not targets or objects of a conspiracy are entitled to bring actions in federal courts for injuries sustained through violations of civil rights statutes, it is also essential for this Court to determine at what point self-styled vigilantes should be held accountable for their disregard of the law.

II

STATEMENT OF FACTS

The San Joaquin Sheriff's Posse Comitatus is an unincorporated association of private citizens, none of whom are authorized law enforcement or "peace officers" under California law, and is a chapter of the nationwide Posse Comitatus which operates not only in the State of California, but in other states as well, including Oregon, Wisconsin, Washington, Idaho and Montana. The Posse Comitatus "Guide" states that the Founding Fathers "bound the federal government to an absolute minimum with a constitution." Public servants who do anything in violation of the Constitution, are committing a "criminal act, an act of treason." (App. D at pp. 5-7). The Guide proposes that the Posse Comitatus should organize trials and prosecute public servants for their alleged crimes:

> If you will do your part as required by the Constitution and no relief is given, you will prove the fact that your public

> servants are corrupt and prepare the way for public trials of our criminal public servants. If you will do your part the Committee will come forth and organize public trials to prosecute our public servants for the alleged crimes. . . . (App. D at pp. 6-7)

The San Joaquin Sheriff's Posse Comitatus filed a charter at the County Recorder's Office in San Joaquin County in February of 1975, associating with the national Posse Comitatus "[u]nder authority of the Constitution of the United States, Magna Carta, and Common Law." (Apps. D at p. 7, and E-2 at p. 4).

On September 1, 1975, respondents (property owners, tomato growers and members of the Posse Comitatus) held a meeting at which the Posse Comitatus was authorized to act on behalf of the respondent owners and growers, to protect their respective properties from United Farm Workers members who were attempting to lawfully gain access to the tomato growers' fields for the purpose of union organizing. Several of the respondents specifically ordered the Posse Comitatus to ensure that no one, including sworn peace officers acting pursuant to lawful authority, enter their respective properties, and advised them that anyone attempting to do so should be prevented by any means necessary (App. B at pp. 7-8).

On September 2, 1975, petitioners Deputy Sheriffs were warned about the potentially violent labor dispute which might occur between the United Farm Workers members on one hand, and the various property owners and the Posse Comitatus on the other. When the petitioners Deputy Sheriffs arrived at the tomato growers' field in response to that warning, Posse Comitatus members were already present, armed with guns and clubs, and wearing badges bearing the legend "Sheriff's Posse Comitatus" virtually identical in design and appearance to official badges issued to sworn officers of the San Joaquin County Sheriff's Department (App. B, at pp. 8-9).

During the confrontation that subsequently developed, respondent Posse member Michael Eugene Brown, General Manager of the Defendant Western Tomato Growers and Shippers, Inc., posted a sign at the edge of the tomato field, signed "Western Tomato Growers, By Gene Brown" which stated in pertinent part:

> NOTICE
>
> KEEP OFF - NO TRESPASSING
>
> TO ALL OFFICERS OF THE LAW
>
> INCLUDING ALL FEDERAL, STATE, COUNTY OR CITY AGENTS

. . .

> Any officer, or other person at the direction of any officer, whether an undercover agent or not, who attempts to enter these premises without a proper warrant or judgment issued out of a court which is a part of the judicial branch of the government, and issued under the seal of the court, signed by the clerk, will be treated as any other trespasser or lawless intruder would be when attempting to break and enter an inhabited dwelling when warned not to do so. Survivors will be prosecuted. (emphasis added)[1/] (App. E-1)

Thereafter, one Deputy Sheriff attempted to arrest respondent Posse member Francis Gillings pursuant to a

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1/ This threatening language takes on particular import when one considers the countless instances where law enforcement officers are authorized to make arrests and to enter upon property without a warrant or an order. The statutory authority of government officers to make felony arrests without a warrant states the constitutional standard as embodied in the Fourth Amendment. 18 U.S.C.A. §3052; U.S.C.A, Constitution, Amendment 4; Henry v. U.S., 361 U.S. 98 (1959). Government officers may not only make warrantless arrests upon probable or reasonable cause to believe an arrestee has committed a crime (U.S. v. Marion, 404 U.S. 307 (1971)), but may specifically enter private property in hot pursuit of a suspect. U.S. v. Santana, 427 U.S. 38 (1976). Not only can an officer enter private property without a warrant to prevent the commission of a felony or a misdemeanor, it may be dereliction of duty for an officer not to act in such circumstances. This is the case in California where it is an officer's duty in cases of offenses committed in his presence such that he would be grossly neglecting his duty if he failed to arrest a person whom he had reasonable cause to believe had committed a felony when, in fact, a felony had been committed. Lees v. Colgan, 120 Cal. 262 (1899).

warrant previously issued for his arrest. Petitioners Deputy Sheriffs warned Gillings that he would be placed under arrest, and entered upon the property to effectuate that arrest. The petitioners were threatened that they would be shot, had guns pointed and waved at them, and several of the petitioners were pushed or beaten by Posse Comitatus members.

As a result of the above incident, respondent George Hill was convicted of resisting, delaying and obstructing a peace officer from the discharge of his duties; respondent Francis Gillings was convicted of assault with a deadly weapon; and respondent Norman Brown was convicted of assault.

Above and beyond the physical confrontations of September 2, 1975, respondents directed numerous threats against public servants in general and against petitioners in particular. For example, the Appendix sets forth Exhibits which include affidavits sent by the respondent Ernest Perry to the petitioners Robert Fouts, Rodney Brown and John LaFave, demanding their signatures and requesting guarantees to determine whether they were acting as legal law enforcement personnel or as "ultra-vires officials." (App. E-3, at pp. 1-3). The affidavit sent to Rodney Brown states in pertinent part as follows:

> Subject: Take all the rope you need. When you get to the end, tie a knot and hang on . . . such 'refusal' [to sign and return said affidavit] to comply will constitute 'prima facie' evidence that you have in fact, taken the ultra vires laws in lieu of the constitutional safeguards which involves your 'oath of office' criminal violations. [sic] (App. E-3 at p. 5).

Appendix E-4 is a portion of a flier branding those public officials who deal with federal currency as criminals, potentially exposing them to public trials by the Posse Comitatus, as described above. In this connection, federal reserve notes are described as "phoney money" as follows:

> It is against the law of the land to have or use this money. A public servant is aiding and abetting crimes that collects these phoney "fed notes" for taxes, citations, licenses and paychecks which is nothing more than ink credit. The whole of San Joaquin County is a nest of "oath of office breaking" public servants. Their crimes are numerous.

As a result of these threats and related acts of violence, petitioners brought this action under the so-called "Ku Klux Klan Act" which was intended to protect the lawfully constituted authority of state officials from usurpation by vigilantes.

III

PROCEDURAL STATUS

On August 30, 1976, petitioners brought this action in the Eastern District of California, alleging, inter alia, that respondents injured petitioners as a result of a conspiracy in violation of 42 U.S.C. §1985. (App. D at p. 3). Additionally, petitioners alleged a variety of pendent state claims, including assault, battery, slander, and fraud. 2/

On August 1, 1978, a memorandum Order Dismissing All Claims was entered based on petitioners' ostensible failure to state a claim (App. A). The petitioners filed a Notice of Appeal with the Court of Appeals for the Ninth Circuit on August 29, 1978, and thereafter, on April 6, 1981, the Ninth Circuit affirmed the District Court decision (App. B). As described, supra, at page 3, petitioners' subsequent Petition for Rehearing and Suggestion for Rehearing en Banc was denied by the Ninth Circuit on May 27, 1981 (App.C).

2/ Petitioners also alleged that the respondents individually, and in a conspiracy under color of state law, damaged petitioners in violation of §1983. This particular cause of action will not be addressed in this Petition.

IV

PARTIES

Petitioners in this matter include Michael N. Canlis, Sheriff-Coroner, County of San Joaquin, suing in his official capacity only; San Joaquin Sheriff's Benefit Association, a recognized labor organization suing on its own behalf and on behalf of each and every one of its members; and individual San Joaquin Deputy Sheriffs Rodney Brown, Robert Fouts, Carl Ambrose, Gerald Krien, Ken Wagner, John LaFave, John McGaughey, Ernest Rodriguez, Cliff Weaver and Dale Mayer.[3/]

Respondents herein include the San Joaquin Sheriff's Posse Comitatus; individual sworn members of the Posse Comitatus Francis Gillings, Norman Brown, George Hill, Steven Gillings, Michael Eugene Brown, Lewis Daniel Elam, Frank Ray, and Rufus Shackelford;[4/] and corporate entities Western Tomato Growers and Shippers, Inc., and Stockton

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3/ Daniel Delfatti, a San Joaquin Deputy Sheriff and an original plaintiff in this action, voluntarily dismissed his action against respondents on March 27, 1978.

4/ At the time of this writing, a settlement is being negotiated between the petitioners and the estate of Ernest Perry, an original party defendant in this action. The estate of Perry is not a party to this Petition.

Tomato Company, Inc.[5/] At all times material to this case, respondent Shackelford was the president of respondent Western Tomato Growers and Shippers, Inc., and respondent Ray was president of respondent Stockton Tomato Company, Inc. Petitioners alleged that each of these individuals was acting as the agent, servant and employee of his respective corporation, and that each of the respondents conspired with each and every other respondent in committing the overt acts in furtherance of the conspiracy as alleged (App. D, at p. 14-18).

V

DISTRICT COURT DECISION

As described supra at pages 3 and 12, the District Court for the Eastern District of California rendered a memorandum decision dismissing the federal claims in this action for failure to state a claim, and also dismissing the pendent state law claims due to the weakness of the federal claims (App. A).

5/ The Southern Pacific Company, an original defendant in this action, was dismissed on November 9, 1976, pursuant to a stipulation for dismissal under Fed.R.Civ.P.41(a)(1) and is not a party to this Petition.

VI

THE NINTH CIRCUIT DECISION

The Court of Appeals for the Ninth Circuit affirmed the District Court Decision in explicitly holding that the cited portions of the Civil Rights Act of 1871, 42 U.S.C. §§1983, 1985(1) and 1985(3), had not been violated.

With respect to the alleged violations of 42 U.S.C. §1985, the court held that as the officers of a county sheriff's department, petitioners were not intended beneficiaries of rights and protections afforded by 42 U.S.C. §1985(1), proscribing conspiracies to prevent federal officers, by force, intimidation, or threat from discharging their duties. The court also concluded that antipolice bias did not constitute the kind of class-based invidious discriminatory animus envisioned and prohibited by §1985(3) and, congruently, that your petitioners would have to be members of the class discriminated against to claim benefits of that statute's provisions proscribing conspiracies to deny the equal protection of the laws.

As to the §1983 issues raised by the petitioners, the court held that the fact that an unincorporated association of private citizens filed a charter with the County Recorder did not render the association's actions to have been taken "under color of state law" within the purview of the Civil

Rights Act of 1871. Similarly, the court concluded that the respondent's self-proclaimed authority to act as a sheriff's posse comitatus and its wearing of badges substantially similar in design and appearance to badges worn by sheriff's deputies likewise failed to constitute actions taken "under color of state law" under the Act. The Ninth Circuit's holding on the § 1983 issues is not addressed in this Petition.

VII

REASONS FOR GRANTING THE WRIT

A. Innocent Bystanders and Individuals Not Targets or Objects of a Conspiracy are Entitled to Recover for Injuries Sustained Under §1985(3).

1. This Court consistently upheld the right of nonobjects of discrimination to maintain actions for injuries sustained as a result of such discrimination.

In a long line of cases, this Court has consistently upheld the right of individuals to maintain actions for injuries received as a result of discrimination against others. In viewing the salient issue as one of standing, this Court has clearly held that those injured by discrimination, even if they are not members of the class discriminated against, may state a cause of action for the injuries they receive. One of those decisions, described below, was under 42

U.S.C. §1982, part of the Ku Klux Klan Act which is at issue in this case.

In Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972), this Court held that discrimination against minorities in renting practices injured whites by denying them the benefits of living in an integrated community, thus upholding the standing of the whites to sue under §801(a) of the Civil Rights Act of 1968 for injuries they received as a result of the discrimination. Under a similar rationale, this Court recently granted standing to a town to sue for its injuries, when blacks were the victims of private discrimination. Gladstone Realtors v. Bellwood, 441 U.S. 91 (1979). See also Barrows v. Jackson, 346 U.S. 249 (1953).

In Sullivan v. Little Hunting Park, 396 U.S. 229 (1969), this Court upheld the standing of a white to sue for the injuries he received in trying to vindicate the rights of minorities protected by 42 U.S.C. §1982. As indicated above, §1982 is part of the Ku Klux Klan Act under which your petitioners have brought this action, and the reasoning and policy behind the Court's decision there would be no less applicable in this case.

2. The Ninth Circuit erred in concluding that the law of that circuit and others is that a plaintiff must be a member of a class discriminated against.

The only case directly addressing §1985(3) is Richardson v. Miller, 446 F.2d 1247 (3d Cir.1971). There the Third Circuit overturned a district court dismissal of a complaint [6/] filed by a white who was discharged from his employment for advocating racial equality in employment opportunities, stating:

> [w]hile the question is very close, particularly because unlike Griffin, the plaintiff is not a member of the class discriminated against, we have concluded that in light of the trend and recent decisions to 'accord [to the civil rights statutes] a sweep as broad as [their] language,' Griffin [v. Breckenridge] supra [403 U.S. 88 (1971)], p. 97 (other citations omitted), and in light of the standard by which these allegations must be viewed when faced with a motion under Rule 12 of the Federal Rules of Civil Procedure, the question here must be answered in the affirmative. Id. at 1249.[7/]

6/ The instant case is treated by the Ninth Circuit as a judgment on the pleadings, App. B at p. 2.

7/ Although ignored by the Ninth Circuit in its decision, Richardson was specifically brought to the court's attention in a letter filed by petitioners on September 4, 1980 (attached as App. G) and was discussed extensively in oral argument.

In the Ninth Circuit's decision below, the court misstates that "the law of this Circuit is clear: the plaintiff must be a member of the class discriminated against to claim the benefits of subsection 1985(3). Briley v. California, 546 F.2d 849, 859 (9th Cir. 1977); Lopez v. Arrow Head Ranches, 523 F.2d 924, 927 (9th Cir. 1975)." (App. B at p. 36. Contrary to the court's assertion, neither Briley nor Lopez stand for the proposition that a plaintiff must be a member of the class discriminated against. In both cases, the Ninth Circuit merely held that the plaintiffs had not alleged a sufficient class-based animus to state a claim under §1985(3). In Lopez, the Court held that the class was too indistinct, and further held that a class may not be characterized in terms of the right deprived, as opposed to the intent of the conspiracy. Lopez, id. at 928. In Briley, no class whatsoever was alleged.[8/] However, there the court never even reached the issue of whether Briley would have standing if a class were alleged of which he was not a member:

8/ In dictum, the Ninth Circuit, in Briley, stated that "to state a cause of action under §1985(3) [footnote omitted], it must be asserted that the defendants conspired to deprive a plaintiff (or a class of persons of which plaintiff is a member) of equal protection of the laws. . ." Id.

> [i]n the instant action, Briley fails to allege that the plea bargaining arrangement or the castration was motivated by racial or any other invidiously discriminatory animus. 546 F.2d 849, 858-859.

Your petitioners respectfully submit that the issue confronting the Ninth Circuit in this case, i.e., the propriety of a District Court dismissal of a complaint filed by law enforcement officials injured in the course of giving and securing to a protected class equal protection of the laws, is virtually identical to the issue resolved by the Third Circuit in Richardson, supra. The conflicting decisions of these two Courts of Appeals clearly call for an exercise of this Court's power of supervision through a provident granting of this Writ.

3. The language of §1985(3) provides a cause of action to any party injured by a conspiracy set torth in that section.

The remedial language of §1985(3) expressly gives the cause of action to anyone deprived of their rights or injured by the conspiracies set forth therein:

> In any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an

> action for the recovery of damages, occasioned by such injury or deprivation against any one or more of the conspirators. (emphasis added)

Certainly, when Congress extended the right to sue to any party injured by the enumerated conspiracies, it was to expressly further the purpose for which the statute was adopted, to wit: deterring and punishing those who so conspire. The benefits of providing such a right of action inures to the targets of discrimination, who are protected by a high standard of care, resulting in a greater deterrent effect on those who conspire against them. Moreover, the language of §1985(3) specifically refers to the protection of state officers acting to secure the rights of those being deprived of equal protection, and makes them just as much beneficiaries of the statute as any other group. In the instant case, your petitioners were injured in attempting to secure the lawfully protected rights of the United Farm Workers (see App. B at pp. 8-15). As set forth in the statute:

> If two or more persons in any state or territory conspire or go in disguise on the highway or the premises of another for the purpose of depriving, either directly or indirectly, any person or class of persons the equal protection of the laws, or of equal privileges and immunities under the law; or for the purpose of preventing or hindering the constituted authorities of any state or

> territory from such giving or securing to all persons within such state or territory the equal protection of the laws . . . the party so injured or deprived may have an action for the recovery of damages . . . (emphasis added) 42 U.S.C. §1985(3).

In view of the fact that this Court's acknowledged approach "to other Reconstruction civil rights statutes . . . has been to 'accord [them] a sweep as broad as their language' [citations omitted]" Griffin v. Breckenridge, 403 U.S. 88, 97 (1971), your petitioners respectfully urge application of this standard of review in your consideration of the facts of the instant case.

4. The complaint alleges sufficient class-based discrimination.

In the Ninth Circuit opinion below, that court held that it need not determine whether classes comprised of members of labor organizations are protected by §1985(3), since the appellants were not members of the United Farm Workers (App. B at pp.35-36). Since, as demonstrated above, petitioners do in fact have standing to sue, the Ninth Circuit should have determined whether discrimination against the United Farm Workers is class-based discrimination protected by §1985, insofar as any person injured in the course of such conspiracy has the right to sue for damages under the remedial language of the statute.

It should be noted that the Ninth Circuit had previously approved a broad view of the classes permissible under §1985 in Life Insurance Co. of North America v. Reichardt, 591 F.2d 499, 505 (1979). The Court there cited with approval the following cases in which lower courts did not limit their protection to racial or otherwise suspect classifications:

> Means v. Wilson, 522 F.2d 833 (8th Cir. 1975) (political opponents are a sufficient class); Cameron v. Brock, 473 F.2d 608 (6th Cir.1973) (supporters of a political candidate are a sufficient class); Azar v. Conley, 457 F.2d 1382 (6th Cir.1972) (a single family is a sufficient class). See also Harrison v. Brooks, 446 F.2d 404 (5th Cir.1971). Ibid.[9/]

Clearly, the trend has been to expand coverage of the statute. Most recently, the Fifth Circuit has held that the statute protects against conspiracies directed against non-union laborers and their employers. Scott v. Moore, 640 F.2d 708 (5th Cir. 1981). Certainly union laborers and organizers such as those involved in this case should be accorded the same protection.

9/ The Harrison case held that those adversely affected by a zoning ordinance were a sufficient class. See also other cases listed in the court's decision at footnote 15, Id.

B. The Complaint Alleges a Conspiracy Against Federal Officers Under 42 U.S.C. §1985(1).

42 U.S.C. §1985(1) provides a federal cause of action for the recovery of damages for those injured in situations where

> [t]wo or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties . . . (emphasis added)

The District Court dismissed petitioners' cause of action under 42 U.S.C. §1985(1) due to the failure to set forth sufficient facts to show the existence of a conspiracy directed at federal officers (App. A at p. 3). If the allegation of posting of a sign prohibiting "trespassing . . . including . . . all federal . . . agents . . . survivors will be prosecuted . . ." (see Ninth Circuit Decision, App. B at p. 10, at footnote 6), was not sufficient, these

were clearly enough facts pleaded to permit the complaint to have been amended if any further specificity was required.

The remedial provision of this section is the same as that set forth, supra, for §1985(3), and affords redress for injuries received by any person in the course of the proscribed conspiracy.

The Ninth Circuit cited Baron v. Carson, 410 F.Supp. 299 (N.D.Ill. 1976) (App. B at pp. 24-25) as reaching a conclusion identical to its own, i.e., that nonfederal officers are not protected within the meaning of the statute. Yet it should be noted that the true holding of Baron was that a conspiracy directed against county officers alone was not sufficient to set forth a cause of action under §1985(1). Your petitioners have at no time contended that a conspiracy against federal officers was not required under §1985(1), and indeed, have argued in their briefs and oral arguments below, that such a conspiracy was, in fact, alleged. The Ninth Circuit, in citing the Baron case, demonstrates the degree to which it has misconstrued the arguments of your petitioners.

The Ninth Circuit misapplies the cases decided under §1985(3) and cited by petitioners in support of the proposition that under that provision of the statute, state action is not required and that mere interference with state officers

is sufficient to state a cause of action (see App. B at pp. 25-26). The court concludes that these cases do not support a theory that a conspiracy against state officers under §1985(1) is actionable. The incongruity of these determinations is patent -- the Court has set up and knocked down a "straw man."

Moreover, your petitioners respectfully submit that the Ninth Circuit decision is replete with other such significant misinterpretations of law and argument. The Court erred with respect to petitioners' use of Griffon v. Congress of Racial Equality, 221 F.Supp.899 (E.D.La., 1963) which, contrary to the Court's assertion, was not cited by petitioners to support the notion that §1985(1) covers conspiracies against state officials, but rather was cited by petitioners to support their contention that freedoms of speech and assembly are rights cognizable under the equal protection language of §1985(3) (see App. B at p. 25). The holdings of those cases have nothing whatsoever to do with the issue raised under §1985(1).[10/]

10/ Only the case of Hermes v. Hein, 479 F.Supp. 820, 825 (N.D. Ill. 1979) based any holding on §1985(1). In that case a §1985(3) cause of action was upheld in favor of one claiming discrimination because of political affiliations, but the §1985(1) claim was rejected "for the reasons stated in defendants brief . . ." 479 F.Supp. 820.

The Ninth Circuit's misinterpretations should not serve to obscure the fact that state officers are the beneficiaries of a remedy afforded to anyone injured by a demonstrable conspiracy against federal officers. In the instant case, the petitioners' complaint did allege a conspiracy to threaten federal officers, and, as a result of that conspiracy, the petitioners were injured. The Ninth Circuit's restrictions on the rights of those injured by proscribed civil rights conspiracies is without precedent.

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be granted, and the decision of the Ninth Circuit Court of Appeals reversed.

DATED: August 24, 1981.

Respectfully submitted,

Gary M. Messing, Esquire
Maureen N. Brennan, Esquire
CARROLL, BURDICK & McDONOUGH

Attorneys for Petitioners

CERTIFICATE OF SERVICE

A copy of the foregoing Petition for Writ of Certiorari with accompanying appendices was mailed this date to:

Attorney General of the United States
Department of Justice
Washington, D.C. 20530

and to

Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

DATED: August 24, 1981.

s/s Maureen N. Brennan
Maureen N. Brennan

APPENDIX A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL N. CANLIS, Sheriff-Coroner County of San Joaquin; SAN JOAQUIN SHERIFF'S BENEFIT ASSOCIATION; DANIEL DELFATTI; RODNEY BROWN; ROBERT FOUTS; CARL AMBROSE; GERALD KRIEN; KEN WAGNER; JOHN LaFAVE; JOHN McGAUGHEY; ERNEST RODRIGUEZ; CLIFF WEAVER; and DALE MAYER, Plaintiffs, v. SAN JOAQUIN SHERIFF'S POSSE COMITATUS; FRANCIS GILLINGS; NORMAN BROWN; GEORGE HILL; STEVEN GILLINGS; ERNEST PERRY; MICHAEL EUGENE BROWN; LEWIS DANIEL ELAM; FRANK RAY; RUFUS SHACKELFORD; WESTERN TOMATO GROWERS AND SHIPPERS, INC.; STOCKTON TOMATO COMPANY, INC.; and SOUTHERN PACIFIC COMPANY, Defendants.	Civil Action No. C-76-456-PCW ORDER DISMISSING ALL CLAIMS

Defendants Ernest Perry and Lathrop Farm Labor Center having moved for dismissal under Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure, and Defendants Rufus Shackelford,

Western Tomato Growers and Shippers, Inc., Michael Eugene Brown, Frank Ray, and Stockton Tomato Company, Inc., having moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure (or in the alternative for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, or for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure), and Plaintiffs having moved for sanctions against Defendants Francis Gillings, Norman Brown, George Hill, Steven Gillings, and Lewis D. Elam, with all parties having been notified of said motions and hearing thereon, and the Court having been fully advised by the memoranda of points and authorities, the pleadings on file herein, and the oral arguments presented;

The Court finds that there is no material fact in dispute and that, based on the motions, notices of motions, and amended notice of motions, the memoranda of points and authorities and pleadings on file herein, and the oral arguments presented, that Defendants' motions should be and hereby are granted in their entirety be-

cause Plaintiffs fail to state a claim under 42 U.S.C. §§ 1983, 1985(1), and/or 1985(3) and because, with no federal claims remaining, all pendent state law causes of action likewise should be dismissed pursuant to the Court's discretion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That, due to the failure to set forth sufficient facts to establish state action, Plaintiffs' First Cause of Action, under 42 U.S.C. §1983, hereby is dismissed as to all Defendants for failure to state a claim;

2. That, due to the failure to set forth sufficient facts to show the existence of a conspiracy to force, injure, threaten, intimidate, induce, or otherwise molest, interrupt, hinder, or impede any federal officer in the lawful discharge of his official duties, Plaintiffs' Second Cause of Action, under 42 U.S.C. §1985(1), hereby is dismissed as to all Defendants for failure to state a claim;

3. That, due to the failure to set forth sufficient facts to show the existence of

any class-based, invidiously-discriminatory animus, Plaintiffs' Second Cause of Action, under 42 U.S.C. §1985(3), hereby is dismissed as to all Defendants for failure to state a claim;

4. That, with no federal claims remaining, Plaintiffs' Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Causes of Action, which are before this Court only under the discretionary doctrine of pendent jurisdiction, hereby are dismissed as to all Defendants;

5. That, with all of Plaintiffs' causes of action being dismissed as to all Defendants, Plaintiffs' motion for sanctions as to certain Defendants is moot and therefore hereby is denied.

IT IS SO ORDERED.

Dated: July 31, 1978.

/s/ Philip C. Wilkins
JUDGE, UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF CALIFORNIA

CIVIL ACTION FILE NO. S-76-456-PCW

MICHAEL N. CANLIS, et al., Plaintiffs,	)	
vs.	)	JUDGMENT
SAN JOAQUIN SHERIFF'S POSSE COMITATUS, et al., Defendants.	)	

This action came on for hearing before the Court, Honorable Philip C. Wilkins, United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered, August 1, 1978.

It is Ordered and Adjudged that the above entitled case is hereby dismissed as to all defendants.

Judgment is hereby entered in favor of de-

fendants and against plaintiffs in the above entitled case.

Dated at Sacramento, California, this 1st day of August, 1978.

JAMES R. GRINDSTAFF
Clerk of Court

By: /s/ S. Jaggard,
S. Jaggard, Deputy Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

MICHAEL N. CANLIS, Sheriff-Coroner, County of San Joaquin; et al., Plaintiffs-Appellants, v. SAN JOAQUIN SHERIFF'S POSSE COMITATUS; Francis Gillings; Norman Brown; George Hill; Steven Gillings; Ernest Perry; Michael Eugene Brown; Lewis Daniel Elam; Frank Ray; Rufus Shackleford; Western Tomato Growers and Shippers, Inc.; Stockton Tomato Company, Inc.; and Southern Pacific Company, Defendants-Appellees.	No. 78-3134

Argued and Submitted Sept. 11, 1980.
Decided April 6, 1981.

Appeal from a Judgment of the United States District Court for the Eastern District of California

Before WRIGHT and TANK, Circuit Judges, and GRANT*, Senior District Judge

GRANT, Senior District Judge:

*Senior District Judge Robert A. Grant of the United States District Court for the Northern District of Indiana, is sitting by designation.

EXHIBIT B

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

MICHAEL N. CANLIS, Sheriff-Coroner, County of San Joaquin; et al., Plaintiffs-Appellants, v. SAN JOAQUIN SHERIFF'S POSSE COMITATUS; Francis Gillings; Norman Brown; George Hill; Steven Gillings; Ernest Perry; Michael Eugene Brown; Lewis Daniel Elam; Frank Ray; Rufus Shackleford; Western Tomato Growers and Shippers, Inc.; Stockton Tomato Company, Inc.; and Southern Pacific Company, Defendants-Appellees.	)	No. 78-3134

Argued and Submitted Sept. 11, 1980.
Decided April 6, 1981.

Appeal from a Judgment of the United States District Court for the Eastern District of California

Before WRIGHT and TANK, Circuit Judges, and GRANT*, Senior District Judge

GRANT, Senior District Judge:

*Senior District Judge Robert A. Grant of the United States District Court for the Northern District of Indiana, is sitting by designation.

This is an appeal from an Order of the United States District Court for the Eastern District of California dismissing a civil rights action brought pursuant to 42 U.S.C. §§ 1983, 1985.[1/] The question before this court is whether the district court erred in dismissing the complaint for failure to state a claim upon which relief could be granted.[2/]

Appellants' complaint, filed August 30, 1976, is founded upon various incidents which

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1/ Along with their federal law claims, appellants asserted several claims based upon the laws of the State of California through the pendent jurisdiction powers of the court.

2/ The district court dismissed the action pursuant to appellee Perry's motion for dismissal under Fed.R.Civ.P. 12(b)(1) and (6), appellees' (Rufus Shackleford, Western Tomato Growers and Shippers, Inc., Michael Eugene Brown, Frank Ray, and Stockton Tomato Co., Inc.) motion for judgment on the pleadings pursuant to Fed. R.Civ.P. 12(c) (or in the alternative for summary judgment pursuant to Fed.R.Civ.P. 56 or dismissal under Fed. R.Civ.P. 12(b)(6)), and appellants' motion for sanctions against the remaining appellees. Although the district court failed to specifically articulate upon which ground it was basing its decision, it appears that the complaint was dismissed as a judgment on the pleadings and will be treated as such by this court.

Defendant Southern Pacific Company was dismissed on November 9, 1976, pursuant to a stipulation for dismissal under Fed.R.Civ.P. 41(a)(1) and is not a party to this appeal.

occurred during the late summer and early fall of 1975 when the United Farm Workers of America (UFW) were seeking to organize farm workers in the County of San Joaquin, California. The named individual appellant-plaintiffs are members of varying rank of the San Joaquin County Sheriff's Office. Appellant San Joaquin Sheriff's Benefit Association, an employee organization for employees of the San Joaquin County Sheriff's Office, brings this action on behalf of itself and its members. The named individual appellee-defendants are members of appellee-defendant "San Joaquin Sheriff's Posse Comitatus," an unincorporated association of private citizens, which is a local chapter of a nationwide organization titled "Posse Comitatus" which operates in many California counties. The named corporate appellee-defendants are all entities incorporated under the laws of the State of California with their principal place of business in San Joaquin County.

BACKGROUND

The material allegations of the complaint, taken as true and liberally construed in

the light most favorable to the appellants, Ernest W. Hahm, Inc. v. Codding, 615 F.2d 830, 834 (9th Cir. 1980); Amfac Mortgage Corp. v. Arizona Mall of Tempe, Inc., 583 F.2d 426, 430 (9th Cir. 1978); Sherman v. Yakahi, 549 F.2d 1287, 1290 (9th Cir. 1977), present the following facts:

A. Events Preceding the Confrontation of September 2, 1975.

On August 30, 1975, several members of the United Farm Workers of America sought entrance to a field owned and operated by the Lathrop Farm Labor Center in the County of San Joaquin. Their purpose was to solicit authorization cards from the employees to determine their possible allegiance to the UFW in the event of a union election. The UFW representatives were advised by Ernest Perry and Leonard Loduco, co-owners of the Center, that the field was their property and that the UFW representatives were trespassing and would be forcibly removed if necessary. During this confrontation, Loduco reported the incident by telephone to the San Joaquin County Sheriff's Office. Several deputy sheriffs responded to the call. A

"shouting match" then ensued between one of the UFW representatives and Perry, with one of the representatives being pushed to the ground. Shortly thereafter, additional sheriff deputies arrived at the scene and witnessed Perry and a UFW representative attempting to place each other under citizen's arrest. The deputies separated the two men and after speaking with both parties, asked the UFW members to leave the property.[3/]

One day later on August 31, 1975, Perry contacted deputy LaFave and told him that he and other growers and farm owners in the San Joaquin County area were "expecting trouble" from UFW representatives. He also told LaFave that armed and prepared members of Posse Comitatus would be present in the fields to insure that any UFW

3/ On September 1, 1975, Perry filed criminal complaints with the Sheriff's Office against the UFW representatives as a result of the August 30 incident. He was informed by appellants Rodney Brown and Robert Fouts that such complaints would necessarily have to be approved by the District Attorney. Perry protested this procedure and stated "we'll get your jobs," or words to that effect. District Attorney Joseph Baker ultimately refused to issue any criminal complaint.

representatives would be prevented from entering and, further, that the Posse Comitatus members would arrest any sheriff deputies who failed to carry out their constitutional duties. Perry later went to the residence of District Attorney Joseph Baker and stated that he had just joined the Posse Comitatus, and that its members would arrest sheriff deputies who failed to perform their duties in a manner acceptable to the Posse Comitatus.

On the morning of September 1, 1975, deputy McGaughey was contacted by Herman Garza, a UFW organizer. Garza stated that a member of the Posse Comitatus threatened to shoot Garza or any other UFW representative who set foot on the property he was protecting.[4/] James Drake, another UFW representative, informed McGaughey that

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4/ The particular field contained a crop of tomatoes which was grown by appellee Stockton Tomato Company; bought and harvested by appellee Western Tomato Growers and Shippers Company; with the field itself owned by Southern Pacific Company.

Francis Gillings had made a similar threat to him. Gillings later confirmed to McGaughey that he had in fact made the threat.

During the evening of September 1, 1975, a meeting was held at the Lathrop Farm Labor Center. Those in attendance included property owners, tomato growers and members of the Posse Comitatus.[5/] Discussions focused upon the expected visit from UFW representatives the following morning on their property in another attempt to organize the farm workers. In response, the Posse Comitatus was authorized to act on behalf of the owners and growers in the defense of their respective properties. The owners and growers additionally advised the Posse Comitatus

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5/ Appellees Perry, Michael Eugene Brown, Rufus Shackleford, Frank Ray, Francis Gillings and George Hill were some of those present. At this meeting, Perry acted on behalf of the Lathrop Farm Labor Center, Ray acted on behalf of the Stockton Tomato Company, and Shackleford and Brown acted on behalf of the Western Tomato Growers and Shippers Company. All were sworn in as members of the Posse Comitatus at the meeting.

that no one, including police officers, were to be permitted to enter their respective properties, and that any who attempted to do so were to be prevented by any means necessary. All those present expressly agreed that the Posse Comitatus would protect the properties beginning the next day.

B. The Confrontation of September 2, 1975.

At daybreak the next morning, ten to fifteen sheriff deputies were patrolling various properties in the San Joaquin area. The Sheriff's Office had been forewarned about potential labor disputes and possible violence that might erupt between UFW representatives and various property owners, growers, and members of the Posse Comitatus. At the same time, approximately fifteen members of the Posse Comitatus were patrolling the borders of one of the fields. All appeared to be armed with guns and clubs. All were wearing badges on their shirts bearing the legend "Sheriff's Posse Comitatus" which were substantially identical in design and appearance to the official

badges issued to deputies of the San Joaquin County Sheriff's Office. Upon arrival of the UFW representatives, a confrontation soon ensued.[6/] The UFW representatives stated to both the members of the Posse Comitatus and the sheriff deputies that they had a legal right of access to the field pursuant to an order by the California Agricultural Relations Board, dated September 29, 1975, allowing access for union organizing.

At approximately 7:15 a.m., Deputy Distict Attorney Joseph DaSilva arrived at the field at the request of the Sheriff's Office to render a legal opinion concerning the access order. DaSilva concluded that the UFW representatives had a legal right to enter but recommended that if they were refused entrance by the Posse Comitatus, the deputies should not escort them into the field by force. DaSilva advised the UFW representatives and the deputies that arrests should only be made in the event of any criminal

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6/ Prior to this confrontation, appellant Ken Wagner observed Michael Eugene Brown put up a sign

violations. DaSilva further advised that if the Posse at the end of the field, signed "Western Tomato Growers, by Gene Brown," which stated in pertinent part:

"NOTICE

KEEP OFF-NO TRESPASSING
TO ALL OFFICERS OF THE LAW
INCLUDING ALL FEDERAL, STATE,
COUNTY OR CITY AGENTS

Any officer, or other person at the direction of any officer, whether an undercover agent or not, who attempts to enter these premises without a proper warrant or judgment issued out of a court which is a part of the judicial branch of the government, and issued under the seal of the court, signed by the clerk, will be treated as any other trespasser or lawless intruder would be when attempting to break and enter an inhabited dwelling when warned not to do so. Survivors will be prosecuted."

Comitatus continued in the denial of access to the UFW representatives, the remedy would be to have the representatives seek judicial enforcement of the order of the Agricultural Relations Board. The representatives of the UFW were then asked to leave the area of the road leading up to the field. They complied with the request. During this tense confrontation, no violence erupted despite frequent "shouting matches" between the UFW representatives who were positioned outside the gates to the field and the Posse Comitatus members who were positioned inside the gates to the field and defending it.

Shortly after the departure of the UFW members, Francis Gillings arrived, entered the field, and immediately took charge of the Posse Comitatus members. Information from a record check conducted by the Sheriff's Office upon Gillings[7/] revealed that the City of Tracy, located within San Joaquin County, was holding

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7/ During this entire period, in light of the fact that all of the members of the Possee Comi-

tatus at the scene appeared to be armed, the Sheriff's Office was conducting record checks to determine whether any outstanding arrest warrants existed for members of the Posse Comitatus or the UFW who could be recognized.

a warrant for Gillings' arrest for his failure to appear at a hearing relating to a speeding ticket.

At approximately 9:00 a.m., Inspector Daniel Delfatti of the Sheriff's Office decided to arrest Gillings pursuant to that outstanding warrant. He was accompanied by three fellow deputies, with four others serving as backup, to observe the approximately forty members of the Posse Comitatus who at this time were spread throughout the field and to insure that none of them would attempt to interfere with the arrest. Delfatti led the arrest team to the edge of the field and called out to Gillings that he had a warrant for his arrest. As the arrest team drew closer, they were confronted by Posse member George Hill who threatened to shoot the officers if they proceeded any further. Hill began to push and shove Delfatti. Despite being warned that he was unlawfully interfering with the arrest duties of a police officer, Hill continued. Delfatti again called out to Gillings that he had a warrant for Gillings' arrest. Gillings responded by racking the loading mechanism of his shotgun and

backing away from Delfatti and the arrest team. The arrest team, already in the field, continued walking towards him. While retreating, Gillings shouted to his armed comrades of the Posse Comitatus, "Back me up!" Delfatti approached Gillings and informed him that he was under arrest. Gillings raised his loaded shotgun and pointed it directly at Delfatti. Delfatti instantly leaned down to his left so as to avoid the muzzle of the shotgun and to possibly grab and remove it from Gillings' possession. As he leaned down, Gillings discharged the gun with the shot narrowly passing Delfatti's ear. Delfatti was then able to wrestle the shotgun away assisted by two deputies who physically subdued Gillings and arrested him.

At some point between the discharge of the shotgun and the physical arrest of Gillings, his son Stephen pointed an automatic shotgun at deputies LaFave and Rodriguez and attempted to fire at them. The gun jammed and did not fire. Rodriguez drew his revolver and order the younger Gillings to drop the shotgun. He did and was taken into custody.

At the same moment that Francis Gillings discharged his shotgun, Norman Brown drew a shotgun and pointed it at deputy Gerald Krien. Krien repeatedly ordered Brown to drop the shotgun, but Brown refused to do so. After two other officers ordered Brown to drop the gun, he finally did so and was arrested. Francis Gillings, George Hall and Norman Brown were all convicted for various offenses arising out of these events.[8/]

THE 42 U.S.C. § 1983 CLAIM

A fundamental requirement of § 1983[9/] is that the challenged action must have been taken "under color of state law." See Life Insurance Company of North America v. Reichardt, 591 F.2d 499, 501 (9th Cir. 1979); Briley v. State of California, 564 F.2d 849, 853 (9th Cir. 1977); Williams v. Gorton, 529 F.2d 668, 670 (9th Cir.

8/ The District Attorney for the County of San Joaquin charged Francis Gillings with three criminal counts: Cal. Penal Code § 245(b) (Assault with a deadly weapon upon a peace officer [Inspector Daniel Delfatti]); Cal.Penal Code § 245(b) (Assault with a deadly weapon upon a peace officer

[Deputy John LaFave]); and Cal.Penal Code § 272 (Contributing to the delinquency of a minor). Following a jury trial, Gillings was convicted on August 9, 1976, of violating Cal. Penal Code § 245(a) (assault with a deadly weapon) and Cal. Penal Code § 272.

The District Attorney charged George Hill with a criminal violation of Cal.Penal Code § 148 (Resisting, delaying or obstructing an officer in the discharge of his duties). Hill was convicted on April 30, 1976, in the San Joaquin County Municipal Court.

The District Attorney charged Norman Brown with a criminal violation of Cal.Penal Code § 245(b) (Assault with a deadly weapon upon a peace officer [Gerald Krien]). Brown was found guilty of violating Penal Code § 240 (Assault).

9/ 42 U.S. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, and shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

1976); aff'd, 566 F.2d 1186 (9th Cir. 1977); Ouzts v. Maryland National Insurance Co., 505 F.2d 547, 550 (9th Cir. 1974), cert. denied, 421 U.S. 949, 95 S.Ct. 1681, 44 L.Ed.2d 103 (1975); Sykes v. State of California, (Department of Motor Vehicles), 497 F.2d 197, 200 (9th Cir. 1974); Cohen v. Norris, 300 F.2d 24, 30 (9th Cir. 1962). The district court dismissed appellants' cause of action under § 1983 for failing to set forth sufficient facts to establish state action. We agree with this finding.

Appellants rely upon two separate theories in support of their claim that the appellees were acting under color of state law. First, that the "San Joaquin Sheriff's Posse Comitatus" filed a Charter with the County Recorder's Office of San Joaquin County on February 18, 1975. Second, that there existed a "custom" within the San Joaquin County area that clothed the Posse Comitatus with the authority of the state.[10/]

10/ Appellants also argue that the state action requirement under § 1983 is outmoded. Such argument has absolutely no basis and is summarily rejected.

In Life Insurance Company of North America v. Reichardt, 591 F.2d 499, 501-02 (9th Cir. 1979), this court comprehensively summarized the wide range of criteria to be applied in determining whether there has been sufficient state action or involvement to give rise to a claim under § 1983. Appellants' reliance upon the filing of the Charter by the Posse Comitatus unquestionably fails to satisfy those criteria. As Judge Wright stated in Reichardt:

> Mere state action is insufficient to support a § 1983 cause of action. There must be a sufficient nexus between the state action and the private discrimination. 591 F.2d at 502.

The mere filing of a Charter as alleged in appellants' complaint, without more, does not constitute a "sufficient nexus".[11/]

Appellants' reliance upon a "custom" sufficient to create the requisite level of state involvement is completely without merit.

11/ See Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972); Yiamouyiannis v. Chemical Abstracts Service, 578 F.2d 164, 166 (6th Cir.) cert. denied, 439 U.S. 983, 99

S.Ct. 573, 58 L.Ed.2d 654 (1978); Cohen v. Illinois Institute of Technology, 524 F.2d 818, 824 (7th Cir.) cert. denied, 425 U.S. 943, 96 S.Ct. 1683, 48 L.Ed.2d 187 (1976); Greenya v. George Washington University, 512 F.2d 556, 559-60 (D.C. Cir.), cert. denied, 423 U.S. 995, 96 S.Ct. 442, 46 L.Ed.2d 369 (1975); Blackburn v. Fisk University, 443 F.2d 121, 123 (6th Cir. 1971); Kadlec v. Illinois Bell Telephone Co., 407 F.2d 624, 626 (7th Cir.), cert. denied, 396 U.S. 846, 90 S.Ct. 90, 24 L.Ed.2d 95 (1969); Rosee v. Board of Trade of City of Chicago, 311 F.2d 524, 525 (7th Cir.), cert. denied, 374 U.S. 806, 83 S.Ct. 1693, 10 L.Ed.2d 1031 (1963); Ludwig v. Quebecor Dailies, Inc., 475 F.Supp. 57, 58 (E.D.Pa.1979); Jordan v. Hawaii Government Employees' Association, Local 152, 472 F.Supp. 1123, 1130 (D.Hawaii 1979); Sament v. Hahnemann Medical College and Hospital of Philadelphia, 413 F. Supp. 434, 439 (E.D.Pa. 1976), aff'd, 547 F.2d 1164 (3d Cir. 1977); Stearns v. Veterans of Foreign Wars, 394 F. Supp. 138, 143-44 (D.D.C.1975), aff'd 527 F.2d 1387 (D.C.Cir.) cert. denied, 429 U.S. 822, 97 S.Ct. 72, 50 L.Ed.2d 83 (1976).

This court acknowledges appellants' basic premise that certain practices by state officials could be violative of § 1983 "[a]lthough not authorized by written law [where such practices] could well be so permanent and well settled as to constitute 'custom or usage' with the force of law." Adickes v. S. H. Kress & Co., 398 U.S. 144, 167-68, 90 S.Ct. 1598, 1613, 26 L.Ed.2d 142 (1970). Appellants fail, however, to set forth in their complaint any allegations that establish a "custom" between the state and the Posse Comitatus. The unilateral and unauthorized adoption of "San Joaquin Sheriff's" as a modifying phrase to the organization's basic title of "Posse Comitatus" and the wearing of badges substantially identical in design and appearance to the badges worn by deputies of the Sheriff's Office do not constitute state action or involvement. If the Posse Comitatus had aided or assisted local or state law enforcement officials in the past, or if there existed a California statute or county ordinance which expressly empowered a deputy sheriff with the authority to call out a posse comitatus in

times of emergency,[12] appellants' argument might possess merit. But such is not the case here. The source of authority for the actions of the Posse Comitatus lies in the organization itself, not from any express or implied state delegation. The state has never jointly participated with the Posse Comitatus in any action nor have mutual benefits been conferred between them. The impetus for all conduct by the Posse Comitatus was purely private, solely and exclusively from within the organization itself. The complaint fails to set forth a single fact to the contrary. Furthermore, rather than acting under the color of state law, the Posse was opposed by the state. Therefore, appellants' reliance upon a "custom" sufficient to

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12/ In Scott v. Vandiver, 476 F.2d 238 (4th Cir. 1973), a South Carolina statute empowered a deputy sheriff to call out a posse comitatus to assist in arresting suspected violators of the law. In addition, the Sheriff had in the past exercised common law powers to summon bystanders in manhunts with the force of law. The court there concluded that the appointment of temporary state law enforcement officials subjected them to liability under § 1983. Those conditions are quite opposite to those in the instant case.

satisfy the requisite level of state involvement must be rejected.

For these reasons, the district court's dismissal of appellants' action under § 1983 is affirmed.

THE 42 U.S.C. § 1985(1) CLAIM

Section 1985(1) provides as follows:

> If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;
> . . .
>
> (emphasis added).

The clear import of this language is that the statute's protections extend exclusively to

the benefit of federal officers. There is nothing in the language of the statute nor in the legislative history to support appellants' interpretation that § 1985(1) does not apply exclusively to federal officers. Appellants contend that Stern v. United States Gypsum, Inc., 547 F.2d 1329 (7th Cir.), cert. denied, 434 U.S. 975, 98 S.Ct. 533, 54 L.Ed.2d 467 (1977), supports their interpretation. This reliance is misplaced. In Stern, the court expanded the scope of § 1985(1) to not only protect federal officers who are injured while attempting to enforce the provisions of the Fourteenth Amendment, but to also protect federal officers who are injured in the course of their normal federal duties unrelated to the Fourteenth Amendment. The court did not expand the scope of the statute to include nonfederal officers. The plaintiff in Stern was an agent for the Internal Revenue Service, and Judge Pell's careful review of the legislative history undeniably confirms this court's holding that non-federal officers are not the intended

beneficiaries of the rights and protections afforded by § 1985(1).

The conclusion of this court is identical to that reached by the court in Baron v. Carson, 410 F.Supp. 299 (N.D.Ill. 1976). In that case, the court found that a member of the County Board of Health was not a protected officer within the meaning of § 1985(1). The court stated:

> On its face, § 1985(1) relates solely to federal officers and federal office holders. The dearth of reported case law on this specific issue appears to be no more than a reflection on the clarity of the statutory language, and the inapplicability of § 1985(1) to anyone but federal officers. Those few courts which have dealt specifically with the question of proper plaintiffs under subsection (1) have done so in passing, noting only the obvious limitations of the statute's inapplicability. See, e.g., Veres v. County of Monroe, 364 F.Supp. 1327, 1329 (E.D.Mich. 1973); McIntosh v. Garofalo, 367 F.Supp. 501, 505 n.4 (W.D.Pa. 1973); Carraway v. Jefferson Parish School Board, 251 F.Supp. 462, 463 (E.D.La. 1966).
>
> The only case to which plaintiff points in support of his contention for coverage of state officials under § 1985(1)

is Griffon v. Congress of Racial Equality, 221 F.Supp. 899 (E.D. La. 1963), which, as noted by defendants, has been repudiated on that issue by the Fifth Circuit in Congress of Racial Equality v. Clemmons, 323 F.2d 54, 63 (5th Cir. 1963).

> We therefore hold that plaintiff's status as a county official is not protected within the meaning of § 1985(1) and accordingly dismiss Count I of the complaint for lack of subject matter jurisdiction.

410 F.Supp. at 301.[13/]

Appellants are state law enforcement officers with the San Joaquin County Sheriff's

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13/ Those courts which have specifically dealt with the question of proper plaintiffs since Baron have also done so in passing, which again confirms "the obvious limitation of the statute's applicability." See Wagar v. Hasenkrug, 486 F.Supp. 47, 50 (D.Mont. 1980); Hermes v. Hein, 479 F.Supp. 820, 825 (N.D.Ill. 1979); Citizens League for Civil Rights, Inc. v. Baker, 464 F.Supp. 1389, 1391 (W.D.Wis. 1978); Neely v. Blumenthal, 458 F.Supp. 945, 951 (D.D.C. 1978); Kedra v. City of Philadelphia, 454 F.Supp. 652, 662 (E.D.Pa. 1978); United States ex rel. Hoss v. Cuyler, 452 F.Supp. 256, 279 (E.D.Pa. 1978); DesVergnes v. Seekonk Water District, 448 F.Supp. 1256, 1260 (D.Mass. 1978), modified on other grounds, 601 F.2d 9 (1st Cir. 1979); Coggins v. McQueen, 447 F.Supp. 960, 966 n.6 (E.D.Pa. 1978); Curran v. Portland Super-

intending School Committee, 435 F.Supp. 1063, 1079 n.9 (D.Me. 1977); Martin Hodas, East Coast Cinematics, Inc. v. Lindsay, (S.D.N.Y. 1977); Brainerd v. Potratz, 421 F.Supp. 836, 839 n.2 (N.D.Ill. 1976), aff'd, 566 F.2d 1177 (7th Cir. 1977).

Office. They are not federal officers as required by § 1985(1). Accordingly, the district court's dismissal of appellants' action under § 1985(1) is affirmed.

THE 42 U.S.C. § 1985(3) CLAIM

Section 1985(3) [14] provides a private civil remedy for persons injured by conspiracies to deprive them of their right to equal protection of the laws. The landmark case corstruing § 1985(3) is Griffin v. Breckenridge, 403 U.S. 88,

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14/ Section 1985(3) provides in pertinent part:

> If two or more persons . . . conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occa-

sioned by such injury or deprivation, against any one or more of the conspirators.

See Great American Federal Savings & Loan Association v. Novotny, 442 U.S. 366, 99 S.Ct. 2345, 60 L.Ed. 2d 957 (1979), and the cases cited therein for a comprehensive review of the legislative history of § 1985(3).

91 S.Ct. 1790, 29 L.Ed.2d 338 (1971). In Griffin, a group of black citizens were assaulted by a group of white citizens as they traveled on an interstate highway in Mississippi. The assault was conducted under the mistaken belief that the plaintiffs were civil rights workers. The issue before the Supreme Court was whether the coverage of § 1985(3) reached individuals acting in a purely private capacity. In holding that it does, the Court enumerated the guidelines for measuring the sufficiency of a complaint under § 1985(3).

> To come within the legislation a complaint must allege that the defendants did (1) "conspire or go in disguise on the highway or on the premises of another" (2) "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." It must then assert that one or more of the conspirators (3) did, or cause to be done, "any act in furtherance of the object of [the] conspiracy," whereby another was (4a) "injured in his person or property" or (4b) "deprived of having and exercising any right or privilege of a citizen of the United States."
>
> 403 U.S. at 102-03, 91 S.Ct. at 1798.

Despite the unanimity in the decision, the broad facial sweep of the language in § 1985(3) caused considerable concern for the Court.

The Court cautioned that although § 1985(3) was intended by Congress to reach private action, Congress did not intend for it to reach "all tortious, conspiratorial interferences with the rights of others." 403 U.S. at 101, 91 S.Ct. at 1798. To effectuate this congressional intention, the Court further defined the second element set forth above to require "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Id. at 102, 91 S.Ct. at 1798 (footnote omitted). Given the facts of the case before it, however, the Court expressly refrained from deciding whether a conspiracy motivated by invidiously discriminatory animus other than racial bias would be actionable under § 1985(3). Id. at 102 n.9, 91 S.Ct. at 1798.

In the years following Griffin, courts have disagreed concerning which conspiracies moti-

vated by non-racial invidiously discriminatory animus fall within the ambit of § 1985(3) protection. 15/ Although § 1985(3) was originally designed to protect oppressed southern blacks from the violence of the vindictive Ku Klux Klan, it is

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15/ No post-Griffin court has found that § 1985(3) is limited exclusively to racial situations. Many federal courts have unhesitatingly expanded the protections of § 1985(3) well beyond the racial context. See Weise v. Syracuse University, 522 F.2d 397 (2d Cir. 1975) (female faculty members), Means v. Wilson, 522 F.2d 833 (8th Cir. 1975), cert. denied, 424 U.S. 958, 96 S.Ct. 1436, 47 L.Ed.2d 364 (1976) (Indian supporters of a political candidate); Glasson v. City of Louisville, 518 F.2d 899 (6th Cir.), cert. denied, 423 U.S. 930, 96 S.Ct. 280, 46 L.Ed.2d 258 (1975) (supporters of a political candidate); Marlowe v. Fisher Body, 489 F.2d 1057 (6th Cir. 1973) (employees of Jewish faith); Smith v. Cherry, 489 F.2d 1098 (7th Cir. 1973), cert. denied, 417 U.S. 910, 94 S.Ct. 2607, 41 L.Ed.2d 214 (1974) (voters who were deceived as to the actual effect of their vote); Cameron v. Brock, 473 F.2d 608 (6th Cir. 1973) (supporters of a political candidate); Azar v. Conley, 456 F.2d 1382 (6th Cir. 1972) (middle class white family); Action v. Gannon, 450 F.2d 1227 (8th Cir. 1971) (members of a predominantly white Catholic parish); Harrison v. Brooks, 446 F.2d 404 (1st Cir. 1971) (married couple); Richardson v. Miller, 446 F.2d 1247 (3d Cir. 1971) (persons who advocated racial equality in employment opportunities); Thompson v. State of New York, 487 F.Supp. 212 (N.D.N.Y. 1979) (Indians, relatives of Indians, or residents of Indian

reservations); Lapin v. Taylor, 475 F.Supp. 446 (D.Hawaii 1979) (federal employees who disclose illegal or improper government activities); Curran v. Portland Superintending School Committee, 435 F.Supp. 1063 (D.Me. 1977) (female employees); Local No. 1 (ACA) v. International Brotherhood of Teamsters, 419 F.Supp. 263 (E.D.Pa. 1976), aff'd in part, rev'd in part, 614 F.2d 846 (3d Cir. 1980) (class expressing views contrary to union leadership); Milner v. National School of Health Technology, 409 F.Supp. 1389 (E.D.Pa. 1976) (female employees); Bradley v. Clegg, 403 F.Supp. 830 (E.D.Wis. 1975) (class of striking and picketing teachers); Brown v. Villanova University 378 F.Supp. 342 (E.D.Pa. 1974) (class of students exercising First Amendment rights through membership in certain organizations); Pendrell v. Chatham College, 370 F.Supp. 494 (W.D.Pa. 1974) (female faculty members); Stern v. Massachusetts Indemnity & Life Insurance Co., 365 F.Supp. 433 (E.D.Pa. 1973) (female insurance purchasers).

Other courts have not demonstrated the same willingness to expand the protections of § 1985(3). See Carchman v. Korman Corp., 594 F.2d 354 (3d Cir.), cert. denied, 444 U.S. 898, 100 S.Ct. 205, 62 L.Ed. 2d 133 (1979) (tenant organizers); Lessman v. McCormick, 591 F.2d 605 (10th Cir. 1979) (debtors); Bova v. Pipefitters & Plumbers Local 60, AFL-CIO, 554 F.2d 226 (5th Cir. 1977) (non-union employee); McLellan v. Mississippi Power & Light Co., 545 F.2d 919 (5th Cir. 1977) (en banc) (bankrupts); Cohen v. Illinois Institute of Technology, 524 F.2d 818 (7th Cir.), cert. denied, 425 U.S. 943, 96 S.Ct. 1683, 48 L.Ed. 2d 187 (1976) (sex based discrimination); Bellamy v. Mason's Stores, Inc., 508 F.2d 504 (4th Cir. 1974) (employees discharged because of Ku Klux Klan membership); Baker v. Stuart Broadcasting Co., 505 F.2d 181 (8th Cir. 1974) (declining to pass on District court's holding that § 1985(3) does not reach sex based conspiracies); Bricker v. Crane, 468 F.2d 1228 (1st Cir. 1972), cert. denied, 410 U.S. 930, 93 S.Ct. 1368, 35 L.Ed.2d 592 (1973) (doctors discriminated against because they have testified adversely to their brethren in mal-

practice cases); Fallis v. Toastmasters International, Inc., 467 F.2d 1389 (5th Cir. 1972) (federal prison employees and inmates); Jacobson v. Industrial Foundation of the Permian Basin, 456 F.2d 258 (5th Cir. 1972) (employees on blacklist because they have filed workmen's compensation claims); Johnson v. City of Cincinnati, 450 F.2d 796 (6th Cir. 1971) (sex based discrimination); Highfield Water Co. v. Public Service Commission, 488 F.Supp. 1176 (D.Md. 1980) (privately owned utility companies and their shareholders); Wagar v. Hasenkrug, 486 F.Supp. 47 (D.Mont. 1980) (public drunks); Abbott v. Moore Business Forms, Inc. 439 F.Supp. 643 (D.N.H. 1977) (age group); Cartolano v. Tyrrell, 421 F.Supp. 526 (N.D.Ill. 1976) (manufacturers and displayers of fireworks); Western Telecasters, Inc. v. California Federation of Labor, AFL-CIO, 415 F.Supp. 30 (S.D.Cal. 1976) (employees of a non-union entity); Smith v. Armstrong, 396 F.Supp. 753 (N.D. Tex.), aff'd without opinion, 524 F.2d 1231 (5th Cir. 1975) (families who have been disrupted by a particular religious cult); Knott v. Missouri Pacific Railroad Co., 389 F.Supp. 856 (E.D. Mo.), aff'd, 527 F.2d 1249 (8th Cir. 1975) (female employees, claims under § 1985(3) not appealed); Furumoto v. Lyman, 362 F.Supp. 1267 (N.D.Cal. 1973) (non-white opponents of racism).

reasonably clear that the drafters intended to extend the protections under § 1985(3) to other groups as well. In Life Insurance Company of North America v. Reichardt, supra, 591 F.2d at 505, this court held that female plaintiffs alleging a conspiracy to deprive a class of women purchasers of disability insurance of their equal rights constitute a protected class.

Even though § 1985(3) has been expanded beyond its narrow historical perspectives, the boundary is not unlimited. A short time after Reichardt, an attempt to further expand the reach of § 1985(3) was rejected by this court. In DeSantis v. Pacific Telephone & Telegraph Co., Inc., 608 F.2d 327 (9th Cir. 1979), three male and two female employees filed actions under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 42 U.S.C. § 1985(3), alleging unlawful discrimination because of their homosexuality. The district court dismissed the complaints as failing to state claims under either statute. On appeal, plaintiffs claimed that after Reichardt,

homosexuals could claim the protection of § 1985(3). This court rejected the argument, emphasizing that neither Congress nor the federal courts had at any time since 1871 deemed the rights of homosexuals to require special protection. 608 F.2d at 333.

The DeSantis court acknowledged that "§ 1985(3) has been liberated from the now anachronistic historical circumstances of reconstruction America," id., but emphasized that the antidiscrimination principle underlying § 1985(3) applies only to groups that require and warrant special federal assistance in protecting their civil rights. See id.

The appellants have failed to demonstrate that they are members of a class entitled to § 1985(3) protection. They have not shown that San Joaquin County Sheriff's officers constitute such a class. We find, as did the court in Taylor v. Nichols, 409 F.Supp. 927 (D.Kan. 1976), aff'd, 558 F.2d 561 (10th Cir. 1977), "that in the context of the instant case anti-police bias does not constitute the kind of 'class-based invidiously

discriminatory animus' envisioned and prohibited by § 1985." 409 F.Supp. at 936.

The appellants also assert that they were the victims of class-based discrimination against the United Farm Workers. We need not determine whether classes comprising members of labor organizations are protected by § 1985(3), for the appellants are not members of the United Farm Workers. The law of this circuit is clear, the plaintiff must be a member of the class discriminated against to claim the benefits of § 1985(3). Briley v. California, 564 F.2d 849, 859 (9th Cir. 1977); Lopez v. Arrowhead Ranches, 523 F.2d 924, 927 (9th Cir. 1975).

Because neither asserted basis for class discrimination satisfies § 1985(3), we affirm the dismissal of the § 1985(3) action.

Dismissal of the pendent state law claims is also affirmed. The district court properly exercised its discretion to dismiss the claims in light of the weakness of the federal claims.

AFFIRMED.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL N. CANLIS, et al., Plaintiffs-Appellants, vs. SAN JOAQUIN SHERIFF'S POSSE COMITATUS, et al., Defendants-Appellees.	)	No. 78-3134 ORDER

Before: WRIGHT and TANG, Circuit Judges, and GRANT, Senior District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing, and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a reharing en banc is rejected.

(Filed - May 28, 1981)

APPENDIX D

RELEVANT PORTIONS OF PLAINTIFF'S VERIFIED COMPLAINT

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL N. CANLIS, Sheriff-Coroner County of San Joaquin; SAN JOAQUIN SHERIFF'S BENEFIT ASSOCIATION; DANIEL DELFATTI; RODNEY BROWN; ROBERT FOUTS; CARL AMBROSE; GERALD KRIEN; KEN WAGNER; JOHN LaFAVE; JOHN McGAUGHEY; ERNEST RODRIGUEZ; CLIFF WEAVER; and DALE MAYER, Plaintiffs, v. SAN JOAQUIN SHERIFF'S POSSE COMITATUS; FRANCIS GILLINGS; NORMAN BROWN; GEORGE HILL; STEVEN GILLINGS; ERNEST PERRY; MICHAEL EUGENE BROWN; LEWIS DANIEL ELAM; FRANK RAY; RUFUS SHACKELFORD; WESTERN TOMATO GROWERS AND SHIPPERS, INC.; STOCKTON TOMATO COMPANY, INC.; and SOUTHERN PACIFIC COMPANY, Defendants.	Civil Action No. C-76-456-PCW VERIFIED COMPLAINT FOR INJUNCTION, DECLARATORY, AND OTHER RELIEF (CIVIL RIGHTS)

Plaintiffs, and each of them, allege the following:

FIRST CAUSE OF ACTION

I

This action arises under the provisions of the Civil Rights act of 1871, §§ 1983, 1985, and the Civil Rights Act of 1866, 42 U.S.C. §1988. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1343, 28 U.S.C. §1331, and 28 U.S.C. §§ 2201, 2202. Plaintiffs bring this action to obtain redress for the deprivation under color of state law, ordinance, regulation, custom or usage of plaintiffs' rights, privileges and immunities secured by the Constitution and laws of the United States, in particular the Second, Fifth, Ninth, Tenth, and Fourteenth Amendments to said Constitution, ... Injunctive and declaratory relief, damages, and other relief are sought. This court has pendent jurisdiction of the claims herein arising . . . under Common Law.

II

Plaintiff MICHAEL N. CANLIS, at all pertinent times was and is now a citizen of the United

States and of the State of California, and a resident of the County of San Joaquin. At all times pertinent herein plaintiff CANLIS has held the position of Sheriff of the County of San Joaquin. As such, plaintiff CANLIS has at all times pertinent herein possessed the powers of preserving the peace, making arrests, preventing affrays and breaches of the peace, and investigating public offenses, etc., as prescribed by law pursuant to California Government Code §26,600 et seq. Plaintiff CANLIS sues herein in his official capacity only.

* * *

V

Defendant SAN JOAQUIN SHERIFF'S POSSE COMITATUS is an unincorporated association of private citizens, none of whom has been authorized or deputized by the Sheriff of the County of San Joaquin, nor by any other lawful authority, to possess or exercise the functions of qualified "peace officers" within the meaning of Part II, Title III, Chapter 4.5 of the California Penal Code,

Penal Code §§830 et seq. (in particular, but not limited to, §§830, 830.1, 832, 832.3, and 832.4). The SAN JOAQUIN SHERIFF'S POSSE COMITATUS is a chapter of the nationwide Posse Comitatus which operates in many counties of the State of California, and in other states as well, including but not limited to Oregon, Wisconsin, Washington, Idaho and Montana. A document distributed and published by the nationwide Posse Comitatus, under the signature of Michael Beach, the nationwide founder, entitled "Posse Comitatus Guide: Instructions; Legal Data; Recommendations and Suggestions", states in pertinent part the purposes of all Posse Comitatus chapters, as follows:

> "One hundred and ninety seven years ago our Forefathers declared themselves free and independent of foreign tyrants. The revolution and Constitution were done in the name of freedom.
>
> Our Founding Fathers knowing full well the tendency of all Governments to become all consuming and tyrannical, bound the Federal Government to an absolute minimum with a Constitution. They said, 'these and only these things are the responsibility of the public servants at the Federal level.' Thomas Jefferson stated the reason for a Government limited in size by a Constitution. He said, 'The total cost of

Government has to be paid in the form of taxes, taxes became a part of the cost of living and the cost of doing business and have to be added to the cost of everything we buy'. He understood the cause of inflation!!!

The exact things our Founding Fathers feared most have come to pass, our public servants have turned our Government into a giant all consuming tyrany, they have turned our Government over to Wall Street and Foreign Bankers and enslaved us in a criminal money system.

In our form of Government you are the master. Your public servants are just that, public servants. Anything they do in violation of the Constitution is a criminal act, an act of TREASON.

The second amendment guarantees our right of revolution to overthrow a corrupt Government. However, everyone loses in a bloody Revolution, so our only sensible course of action must be obeying the intent of the Constitution and the will of the people.

Each of you must put your public servants on notice that all corruption and tyranny must cease immediately. If each of you will reproduce this paper (Instant printer or Xerox) send copies to your public servants are corrupt and prepare the way for public trials of our criminal public servants. If you will do your part as required by the Constitution and no relief is given, you will prove the fact that your public servants are corrupt and prepare the way for public trials of our criminal public servants. If you will do your part the Committee

will come forth and organize public trials and prosecute our public servants for the alleged crimes. . ."

VI

The SAN JOAQUIN SHERIFF'S POSSE COMITATUS filed a "Charter" at the County Recorder's Office of San Joaquin County of February 18, 1975. Plaintiffs are informed and believe, and upon such information and belief allege, that this Charter reads in pertinent part as follows:

> "No. 7006. The following Christian citizens, residents of the County of San Joaquin, California, hereby make application for a Charter to be associated with the National Posse Comitatus, under authority of the Constitution of the United States, Magna Carta, and Common Law. Being citizens of the United States and residents of the above County, we affirm that we do not advocate nor do we belong to a group which adovocates the overthrow of the United States above any temporal power, party or faction. We pledge to uphold the Constitution of the United States as the supreme law of the land and dedicate our lives in the preservation thereof, against all enemies whomsoever, both foriegn and domestic."
> . . .

Defendant SAN JOAQUIN SHERIFF'S POSSE COMITATUS (hereinafter "POSSE COMITATUS") is sued herein

both in its official capacity as an unincorporated association and for acts committed by its member as its agents on behalf and at it direction, as described below.

VIII

At all times pertinent hereto, each defendant named herein, whether associate, individual, or corporate, and whether acting in an individual capacity, an official capacity, under color of law, or in any other capacity, was the agent, servant, and employee of each and every other defendant named herein and was acting within the scope of such agency, service, and employment, and with the permission, consent, and ratification of each and every other co-defendant.

* * *

XVI

* * *

At this time, and at all times pertinent hereto on September 2, 1975, FRANK RAY, on behalf of STOCKTON TOMATO COMPANY, INC., and acting on its behalf, and MICHAEL EUGENE BROWN, on behalf of

WESTERN TOMATO GROWERS AND SHIPPERS, INC., and acting on its behalf, were present at the edge of the tomato field. Plaintiff KEN WAGNER had earlier observed defendant MICHAEL EUGENE BROWN put up a sign at the edge of the tomato field, signed "Western Tomato Growers, by Gene Brown", which states in pertinent part:

> "NOTICE
> KEEP OFF - NO TRESPASSING
> TO ALL OFFICERS OF THE LAW INCLUDING
> ALL FEDERAL
> STATE, COUNTY OR CITY AGENTS
>
> . . .
>
> Any officer, or other person at the direction of any officer, whether an undercover agent or not, who attempts to enter these premises without a proper warrant of judgment issued out of a court which is a part of the judicial branch of the government and issued under the seal of the court signed by the clerk, will be treated as any other trespasser or lawless intruder would be when attempting to break and enter an inhabited dwelling when warned not to do so. Survivors will be prosecuted."

* * *

XVIII

On September 1, 1975, defendant ERNEST PERRY, acting on behalf of and as agent for all the

defendants named herein, for the POSSE COMITATUS, mailed to plaintiffs FOUTS, RODNEY BROWN, and LaFAVE, by certified mail, return receipt requested, purported "Affidavits", each of which demands that the respective plaintiffs uphold the United States and California Constitutions and laws as defendant PERRY, the POSSE COMITATUS, and all other defendants named herein, see fit to interpret those laws. The affidavit mailed to plaintiff FOUTS, which states in pertinent part, "I wish a form of guarantee to determine if you are legal law enforcement, or 'an ultra-vires official'. If you are the latter, then, sir, you have some grave problems. This guarantee is an affidavit with teeth.", is attached hereto as Exhibit '"B" and incorporated herein by reference (together with attachment referring to Federal Reserve Notes as "phoney money"). The affidavit sent to plaintiff RODNEY BROWN states in pertinent part, "Subject: Take all the rope you need. When you get to the end, tie a knot and hang on. . . such "refusal" [to sign and return said affidavit]

to comply will constitute "prima facie" evidence that you have in fact, taken the ultra-vires laws in lieu of the constitutional safeguards which involves your "oath of office" criminal violations ." (sic), it is attached hereto as Exhibit "C" and incorporated herein by reference (together with attachment referring to Federal Reserve Notes as "phoney money"). The affidavit sent to plaintiff LaFAVE states in pertinent part, "When you reach the end of your rope, tie a knot and hang on . . . . . for an ultra-vires sheriff". Said affdavit sent to plaintiff LaFAVE, mailed certified, return receipt requested, is attached hereto and incorporated herein by reference as Exhibit "D". Each of said affidavits refers to defendant ERNEST PERRY as the "Master in Government". Plaintiff MICHAEL N. CANLIS has also received, on various occasions since September 1, 1975, similar affidavits to those referenced above. These affidavits were and are directly intimidating to each of the above-mentioned recipients, and directly threatened action against the above-men-

tioned sworn peace officers by the POSSE COMITATUS and its members, and each of them, if the requirements of said affidavits are not immediately complied with.

XIX

On January 14, 1976, the POSSE COMITATUS placed a full page ad in the Stockton News (attached hereto as App. E-2), a newspaper of general circulation in San Joaquin County, which advertises the "SAN JOAQUIN COUNTY SHERIFF'S POSSE COMITATUS" as an association of private citizens, yet at the same time states at various points that members of said POSSE COMITATUS may lawfully make citizens' arrests, both of private citizens and of elected and appointed officials of the County of San Joaquin. The advertisement discusses generally the purposes of the POSSE COMITATUS and states that if officials of the County of San Joaquin including Sheriff CANLIS and his deputies, do not carry out the laws of the Constitution as the POSSE sees fit, "the POSSE will act as a counterforce against them in any lawful manner." The

name "SAN JOAQUIN COUNTY SHERIFF'S POSSE COMITATUS" or "S.J. COUNTY SHERIFF'S POSSE COMITATUS" is used at least five times in the article. The name "SAN JOAQUIN COUNTY SHERIFF'S POSSE COMITATUS" appears in very large, bold letters at the top of the page. At the right of the page appears a photograph of a typical "SHERIFF'S POSSE COMITATUS" badge, with the number "1250" in the center of the star. Said advertisement is attached hereto as Exhibit "E" and is incorporated herein by reference in its entirety. The advertisement is signed by defendant GEORGE HILL, who was at that time chairman of the POSSE COMITATUS, and also by HAROLD F. GRAVES. As a direct and approximate result of this advertisement being placed in the Stockton News, the San Joaquin County District Attorney filed criminal complaints against GEORGE HILL and HAROLD GRAVES for violations of Penal Code Sections 146(c) (Misdemeanor for Any Person to Designate Any Group by a Name Which Would Lead Others to Believe That It Is Comprised Primarily [90%] of Sworn Peace Officers), and 538(d) (Mis-

demeanor to Willfully Wear, Exhibit, or Use a Badge, Insignia, Emblem, Device, Labor, or Writing of a Peace Officer With Intent of Fraudulently Impersonating a Peace Officer or Inducing the Belief that the Person is a Peace Officer). Said criminal charges against GEORGE HILL and HAROLD GRAVES resulting from the above-mentioned advertisement are presently pending in the County of San Joaquin.

* * *

XXI

In committing each and every one of the above acts set forth in Paragraphs XI through XX, inclusive, all the defendants named herein, whether individual, corporate, or associate, and each of them, have conspired together and with each other in committing said acts. Each defendant named herein is a co-conspirator of each and every other named co-defendant. Each of the acts set forth in Paragraphs XI through XX, inclusive, constitutes an overt act in furtherance of the conspiracy by defendants herein, and each of them, to deprive

plaintiffs, and each of them, of their civil rights, and to cause them harm in other ways, all to the legal detriment of plaintiffs, and each of them, as set forth in this cause of action and the other causes of action set forth below.

* * *

XXIII

By the actions of defendants, and each of them, carried out both individually and in conspiracy with each and every other co-defendant, under color of state law as alleged above, defendants, and each of them, have subjected plaintiffs, and each of them, in violation of 42 U.S.C. §1983, all to their general damages to the deprivation, infringement, abridgement of rights, privileges and immunities secured by the Constitution and laws of the United States . . . including, but not limited to:

(1) The right of plaintiffs, and each of them, as duly sworn peace officers, and as an association representing same in their employer-employee relations, to carry out their obligation

to the people of the County of San Joaquin, to be a "well regulated militia, being necessary to the security of a free state," without infringement upon plaintiffs' ability to perform said function, all in violation of the Second Amendment to the United States Constitution;

(2) The rights of liberty, privacy, and personal security guaranteed to plaintiffs, and each of them, by the Fifth, Ninth, and Fourteenth Amendments to the United States Constitution;

(3) The right of duly sworn peace officers, and an association which represents same in their employer-employee relations, to fulfill their function and obligation of carrying out the police power reserved to them alone under California Government Code §§26,600 et seq., and Penal Code §830 et seq., said police power being reserved solely to the State of California and its duly authorized representatives, by the Tenth Amendment to the United States Constitution;

(4) The vested property right of plaintiffs, and each of them, in their permanent employment as

duly sworn peace officers of the County of San Joaquin, and their rights to have said employment continue, without unlawful interference, and their right not to be denied said property rights except by due process of law, all guaranteed by the Fourteenth Amendment to the United States Constitution;

* * *

XXVI

In all of the actions alleged above, defendants, and each of them, have conspired together, with each and every other defendant named herein, as co-conspirators, and with other co-conspirators whose identities are presently unknown . . ., and have disguised themselves, on the highways and on the premises of others, and fraudulently impersonated duly sworn peace officers, and have purported to act with the legal rights and pursuant to the legal obligations conferred only upon duly sworn peace officers under the laws of the State of California, and have committed overt acts in furtherance of said unlawful conspiracy, as set

forth above, all for the purpose of depriving plaintiffs, and each of them, and all other peace officers of the County of San Joaquin duly sworn pursuant to California Penal Code §§830 et seq., of equal privileges and immunities under the laws of the United States and State of California; and defendants, and each of them, have together conspired, and disguised themselves and impersonated duly sworn peace officers of the County of San Joaquin, as set forth above, for the explicit purpose of preventing or hindering the lawfully constituted authorities of the State of California and the County of San Joaquin from giving or securing to all persons within the County of San Joaquin the equal protection of the laws, all in violation of 42 U.S.C.§1985.

Plaintiffs and each of them, are entitled to punitive damages against defendants, and each of them, based on the allegations set forth above, for the purpose of deterring such unlawful, malicious, oppressive and outrageous conduct.

* * *

APPENDIX E

APPENDIX E-1

NOTICE

KEEP OFF - NO TRESPASSING

TO ALL OFFICERS OF THE LAW

INCLUDING ALL FEDERAL, STATE, COUNTY OR CITY AGENTS.

THIS IS TO PLACE YOU ON NOTICE THAT THE UNDERSIGNED, BEING IN LAWFUL POSSESSION OF THIS PREMISES, DEMANDS THAT ALL LAW OFFICERS ABIDE BY THE EXPRESS PROHIBITIONS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, WHICH IS THE SUPREME LAW OF THE LAND AND TO WHICH YOU HAVE TAKEN A SOLEMN OATH TO UPHOLD, MAINTAIN AND SUPPORT:

- ARTICLE I: "Congress shall make no law—abridging the freedom of speech, or of the press—
- ARTICLE II: "The right of the people to keep and bear Arms, shall not be infringed."
- ARTICLE IV: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated....."
- ARTICLE V: "No person shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;
- ARTICLE IX: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."
- ARTICLE IV FURTHER PROVIDES: "and no Warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

ANY OFFICER, OR OTHER PERSON AT THE DIRECTION OF ANY OFFICER, WHETHER AN UNDERCOVER AGENT OR NOT, WHO ATTEMPTS TO ENTER THESE PREMISES WITHOUT A PROPER WARRANT OR JUDGMENT ISSUED OUT OF A COURT WHICH IS A PART OF THE JUDICIAL BRANCH OF THE GOVERNMENT, AND ISSUED UNDER THE SEAL OF THE COURT, SIGNED BY THE CLERK, WILL BE TREATED AS ANY OTHER TRESPASSER OR LAWLESS INTRUDER WOULD BE WHEN ATTEMPTING TO BREAK AND ENTER AN INHABITED DWELLING WHEN WARNED NOT TO DO SO. SURVIVORS WILL BE PROSECUTED.

(Signed) Victor Terrell Stevens

(Address) By Same Grace

E-1

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APPENDIX E-2

Political Advertisement

Political Advertisement

To All Citizens of San Joaquin County

From: SAN JOAQUIN COUNTY SHERIFF'S POSSE COMITATUS

QUESTION: Many of you have read news accounts or heard TV stories about the San Joaquin County Sheriffs Posse Comitatus. You may have wondered if we are a legal organization—whether we are just a group of adventurers.

This notice is printed to inform you of the reasons the Posse (and others like it throughout the U.S.) was formed—its intentions—and what it means or can mean to you and your family.

Do you value your lifetime savings and expect to enjoy the fruits of your lifetime of effort? Do you want your family, children and grandchildren to continue to live in a land of peace and freedom? Since your answer is "yes" you SHOULD READ THE MESSAGE IN ITS ENTIRETY with an open mind and evaluate it with the greatest care. Also, you should save it for others who may have missed it.

Political Advertisement

SHERIFF'S 1850 POSSE COMITATUS

E-2

10

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WHO FORMED THE POSSE AND WHY?

The Posse is a legally constituted citizens associa- [illegible] formed by family people of this County. We were [illegible] by the continuing rapid deterioration of our country economically, politically and morally. We [illegible] suggest danger looming ahead. We believed it [illegible] to help assess others of what we had learned, to disseminate literature to prove the truths not generally known, and to help ourselves and others prepare for the worst or to prevent it if possible.

EXISTING CONDITIONS SUPPORTING THE POSSES' DECISION

Are the following conditions simply the result of [illegible] bad luck or bungling by our government?

1. Rapidly increasing inflation which is cutting our [illegible] power and making it difficult to support [illegible] families, going on [illegible] take away payment checks [illegible]

2. [illegible] economy, [illegible] looking to [illegible] and worry.

3. [illegible] and majority of our tax systems [illegible] placing the greatest share of taxes [illegible] while the wealthy [illegible]

4. [illegible] the massive sums of money [illegible] by an income tax law di[illegible] of the American people— by grants to [illegible] causes and [illegible] governments. All [illegible] VAST DEFICITS every year on [illegible] over $40 billion per year [illegible] national debt.

5. The great increase of crime in our County and [illegible]

6. Our [illegible] morals, drug use, per[illegible]

7. Sensual [illegible] in our schools, and lack of [illegible] of true American history, [illegible] and the basic 3 R's.

8. The sham of so-called quality education by busing our children back and forth across our cities at fantastic expense—the real reason being to foment racial strife! (When will all of us wake up?)

9. The many needless and unreasonable controls placed on business by such acts as the Occupational Safety and Health and Environmental Protection Act. These and other ridiculous laws are bankrupting many businesses—preventing new ones from forming—and in general are very disruptive to our free enterprise system. Further the costs of administering them are astronomical.

10. The far reaching and determined drive by leftist groups to register and outlaw guns in defiance of the 2nd Amendment to the Constitution. This would result in every household being an easy mark for criminals who will never give up their guns regardless of the law, and would leave us open to complete control by a tyrannical government.

11. Our sellout to the Communists world wide, such as giving Russia great advantage over us in S A L T or detente, and as in the sale of wheat to them on ten years time at 2 per cent interest and then paying transportation on it at $1.25 per bushel. (Of course you don't mind waiting ten years for the money or to see your bread prices rise). And since when did Russia ever pay its debts to us anyway?

12. The financing of wars around the world to be paid for by our taxes, and which we are NOT ALLOWED TO WIN. Plus the fact that we furnish armament to BOTH sides.

13. The doctoring of news, and the writing of strongly biased editorials in newspapers, magazines and TV in order to keep us confused or asleep as to what is really happening, who is causing our bad economic troubles, and as to what are the real intentions behind many of these planned conditions. What has happened to our free press? You should know that most of our publications and TV chains are manipulated by a group who own controlling interests in the news media – even the news services such as AP and UPI who supply releases to all news media in this country.

2

(2)

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DUTIES OF THE POSSE

At the start of this message we mentioned some of the intentions of the Posse, now we will tell you more: Our by-laws state that we are to take positive action in the concepts and true meaning of the language of the Constitution of the United States. We may utilize any legal and reasonable methods to accomplish our goals including the following:

1. Promote and maintain a readiness of body, mind and spirit to serve the body politic and assist the Sheriff when called on to do so.

2. Inform and encourage the citizens of the County to live and work within the framework of the U.S. Constitution.

3. Encourage patriotism of the people by maintenance of a continuing study and understanding of our Constitutional Republic and the basic U.S. documents which govern us.

4. Support only candidates who advocate and believe in the adherence to the Constitution.

The Posse shall remain a non profit organization, and no member shall be paid a salary above $1 per year (make that a SILVER dollar).

It is the duty of the Posse under the Constitution to protect citizens of the County when and if our elected or appointed citizens fail to do so. Posse members may make citizens arrests and the accused shall be turned over to the County Sheriff for custody and he is bound by his oath of office to process such matters and to empanel a citizens jury, which will try the accused. Should the County Sheriff fail to process such arrest papers, he has failed to carry out his duties under County and State law, and is in violation of his oath of office.

Best Copy Available

STORY OF THE POSSE

[illegible] application for a Charter which was signed or [illegible] was recorded at the S. J. County Recorders office on Feb. 18, 1975. This reads as follows: No. 7006. The following Christian citizens [illegible] residents of the County of San Joaquin, California, hereby make application for a Charter to be associated with the National Posse Comitatus, under authority of the Constitution of the United States, Magna Carta, and Common Law. Being citizens of the United States and residents of the above County, we affirm that we do not advocate nor do we belong to any group which advocates the overthrow of the government of the United States. We place our allegiance to the Republic of the United States above any temporal power, party or faction. We pledge to uphold the Constitution of the United States as the supreme law of the land and dedicate our lives in the preservation thereof, against all enemies whomsoever, both foreign and domestic."

New members of the Posse are screened and [illegible] not the admittance of anyone with a past criminal record, and must take the oath of office [illegible] the Charter wording shown above.

[illegible] have read newspaper accounts or heard [illegible] alluded to the Posse as vigilantes, self-[illegible] or [illegible] paramilitary or similar uncomplimentary terms. Such derogatory remarks are usually given by the misinformed, or misinformed news [illegible] to discredit the Posse. Sometimes it's just [illegible] repeated by certain beaver reporters to pep up their news articles. In view of the oath of office each Posse member must take, he had better do nothing against the law as set forth in the Constitution. It is completely legal to see that Constitutional [illegible] are upheld, or else themselves would be [illegible] impeachable and we would be summarily eliminated from the Posse.

The Constitution starts off with the words: "We the people . . . establish this Constitution . . ." and then proceeds to list the articles and amendments, wherein the people conferred certain powers to the government, and those powers not conferred were retained by the people themselves. In our Republic, the people are the sovereign masters, and the elected or appointed government personnel are their servants.

Posse Comitatus means "the people of the County," and by it we claim the power of the people. The people may appoint or elect others to government office. They may also form organizations such as the Posse Comitatus for the purpose of protecting their lives, property and freedom against lawless or revolutionary elements. While government officials swear to uphold the Constitution, they may fail to do so, in such cases the Posse may step in.

Posses have been organized and are in formation throughout the U.S. They exist for the benefit of the people in each County in which established.

Up to the present time, 20 Attorney Generals of as many States have acknowledged that a Posse is legal. We expect that all will do so after research and consideration.

Best Copy Available

[illegible] PROPERTY RIGHTS

[illegible] February 1975 [illegible] given to Sheriff Carlis to attend a [illegible] Posse in order that he could observe, ask [illegible] and satisfy himself of the legality and [illegible] of the Posse. He failed to attend, nor to [illegible] the invitation.

On June 27, 1975, after failing to avail himself of [illegible] about the Posse, and without any [illegible] kind and no wrong doing of any [illegible] of the Posse, Mr. Carlis gave a speech [illegible] members of the American Association of [illegible] Peace in Stockton, in which he referred to [illegible] in contact with several lawless groups [illegible] the Black Panthers, the Weathermen and the [illegible] Family.

On July 7, 1975, the Posse sent a registered [illegible] Sheriff Carlis in which they asked for a [illegible] of the derogatory reference made in his [illegible] Peace to the A.A.R.P. This letter also detailed at [illegible] Carlis the loyalty of the Posse, its aims [illegible] and honorable—and offered [illegible] any enquiry as required [illegible]. Carlis replied to our letter, but [illegible] and did not [illegible] in a last paragraph he [illegible] understanding of the statements [illegible] regarding our lawful aims and [illegible] believe Mr. Carlis was [illegible] the legality of the Posse from that [illegible]

[illegible] with NO TRESPASS signs. Sheriff [illegible] asked to protect their fields [illegible]. Carlis did not respond. Then [illegible] and asked to stand guard of the [illegible] Posse members. The Sheriff had sworn to [illegible] and defend the Constitution in his oath of [illegible] he is therefore in violation of that oath of [illegible] The reason of course is that the 4th amendment [illegible] Constitution affirms property rights of in[illegible]. If fields are posted it means they do not [illegible] permission for anyone to enter. As it was the [illegible] Sheriff to protect those rights and he did [illegible] he failed in his duty as sworn to by him.

Further, Mr. Carlis sent his deputies to the fur[illegible] fields for the purpose of bringing in one of our Posse members on a minor traffic infraction involving an $18 fine by the City of Turlock. Yet this fine was still under litigation. The Posse member was within the confines of the boundaries of the fields, so the Sheriff's deputies entered the field to apprehend the member. The fact that the deputies did not have a warrant for his arrest, nor permission of the farmer to enter, nor a court order to do so, made the Sheriff and his deputies guilty of failure to uphold the Constitution. Let's ask you this: if you had asked our Posse to stand guard at your home when you believed it might be entered unlawfully, would you think it fair and legal if some of Sheriff Carlis' Deputies pushed aside our guard and entered your home without your permission, nor a warrant or court order? This is an absolute illegal act—both on a remote field or at any individual's home. So here again the Sheriff is in violation of his oath of office.

Also, the Sheriff brought about a highly dangerous confrontation with the Posse by sending 40 or 50 deputies in over 20 police cars to the fields guarded by the Posse. The excuse to confront and cause trouble with the Posse was found in that single member of our Posse and his small traffic violation. This action was not one that could be remotely considered as one necessary to uphold the peace. We believe this was a deliberate incitation to violence. Our Posse members acted in the only same manner as [illegible] to protect private property. This is absolute standard procedure where the local police or Sheriff does not have adequate personnel to handle a situation—or where he may refuse or fail to do so. The [illegible] of the Posse members in their duty should have been observed by the Sheriff and his deputies by LEAVING THEM TO THEIR DUTIES of standing guard as requested of them by the farmers. NO subterfuge for causing trouble or embarrassment to the Posse should have been even remotely considered by a responsible servant of the people. Carlis as Sheriff had no right to disregard the Constitutional law—the basic law of this land. We believe he and his deputies are therefore guilty of criminal conduct.

Best Copy Available

RELATIONS [illegible] could enter the farmers fields to enlist union members. Yet, when the farmers [illegible] were posted with NO TRESPASS signs, the organizers were effectively barred by the Constitutional rights of the farmer. The Labor Relations Board had NO RIGHT or AUTHORITY to issue their edict that the organizers could pass over the boundaries of the farmers fields without permission of the farmer. The Posse in this century was strictly formed as a force to be reckoned to the rights as guards. As to the growing [illegible] organizers or pointing guns at them, the Posse has always done more than advise the organizers against entering the posted [illegible].

Since the time of the farmers field incidents several judges have ruled that farmers were within their rights to [illegible] and guard their fields, and the organizers [illegible] what the Constitutional law is regarding the [illegible] of the farmers. The United States Supreme Court has upheld the farmers [illegible].

How Different Are We Today?

[illegible] Courts, and State law refuses to the duties of [illegible] hands and [illegible] and provided he will assist the failure to [illegible] the sheriff or [illegible] the Constitution [illegible] the citizens summoned aforesaid, neglect, refuse to serve his duty to defend the farmers [illegible] and serve, uphold the farmers, [illegible] writs, warrant or court order, the posse [illegible] he may be responsible with him and [illegible] and the Posse will act as a [illegible] in any lawful manner. This [illegible] the District Attorney, [illegible] committed perjury [illegible] Code. The Posse can [illegible]

TO THE PEOPLE OF SAN JOAQUIN COUNTY

You have our promise that we intend only to see that fair dealing and above board procedures are used in this County, and we refer to all citizens and government personnel.

We sincerely desire your good will and cooperation. We invite you to become involved for the good of yourselves, families and friends. We invite your membership in the Posse, or your financial support or both. Women, as well as men, are welcome.

We would be glad to have you attend and ask questions. If you would like to receive more information about the Posse, or documented information regarding some of the statements made in this announcement we will try to get it to you where ever possible.

Use the coupon below. Your name will be kept in strictest confidence. Let us hear from you, or phone if you prefer.

Our country is yet a free Republic. We must all work to keep it that way. Don't just stand by and say let George do it.

Yours for a Happy 1976 and many years after.

S. J. COUNTY SHERIFFS POSSE COMITATUS

By George Hill, Chairman
Harold F. Graves, Vice Chairman

George Hill
[illegible]

Harold F. Graves
[illegible]

P.S. Since the above message [illegible] we believe to be an almost exact [illegible] have, utilizing Lt.Gov. Curren [illegible] with "Contingency" weapons, [illegible] carry arms [illegible] to be used to assist local police or other law [illegible] time of emergency.

[illegible] The Posse Comitatus Act [illegible] whatsoever, except in cases [illegible] the Constitution or by Act of Congress to [illegible] imprisoned not more than 5 years, or [illegible] validity of the Posse Comitatus [illegible] or use enforcement agencies [illegible] and U.S. vs Walter Apodaca, Posse [illegible] must maintain force [illegible] fail from the grace rolls, [illegible] Police Force is unleashed, [illegible] of this manuever and all [illegible] SUSPECT. We should [illegible] [illegible] no idea the [illegible] time for YOU to get involved in this effort to protect our [illegible]

Best Copy Available

APPENDIX E-3

[redacted]
P.O. [redacted]
LATHROP, CA. 95330

[redacted]

[redacted]
272 EAST [redacted] AV.
STOCKTON, CA. 95205

CC: SHERIFF'S POSSE COMITATUS (VARIOUS UNITS ALERTED)
V.C.O.C. (VIOLATORS OATH of OFFICE CLUB INTERE)
U.S.T.U. (UNITED STATES TAXPAYERS UNION)
C.L.C. (CITIZENS for LAW & ORDER)
I.T. (IRATE TAXPAYERS
VARIOUS OFFICIALS

[redacted]

SUBJECT: WHEN YOU REACH THE END OF YOUR ROPE, TIE A KNOT AND HANG ON..... FOR AN ULTRA-VIRES SHERIFF

[redacted]

LET IT BE STATED FOR THE RECORDS, UNDER TITLE 18, SECTION #2382, MISPRISION OF TREASON----(MISPRISION=CONCEMENT, SCORN; MISCONDUCT ESP. IN OFFICE, OR IN NEGLECT OF DUTY,----(BREACH=BETRAYAL OF ANY TRUST OR CONFIDENCE; BREACH OF FAITH. SEE U.S. CONSTITUTION: AMT. 3, SEC. 3=(BREACH GIVING AID AND COMFORT TO THE ENEMY) AND TAKE NOTE OF TITLE 18, SECTION #1621, PERJURY GENERALLY----(PERJURY=FALSE SWEARING; VOLUNTARY VIOLATION OF AN OATH).

TREASON & PERJURY ARE SERIOUS OFFENSES, TAKE NOTE OF THE CA. PENAL CODE, SECTION #126, PUNISHMENT OF PERJURY (PERJURY IS PUNISHABLE BY IMPRISONMENT IN THE STATE PRISON NOT LESS THAN ONE NOR MORE THAN FOURTEEN YEARS).

ON AUGUST 31st, 1975, WRITER'S RIGHTS WERE VIOLATED.WHEN SIX UNITED FARM WORKERS, SO-CALLED ORGANIZERS, ILLEGALLY TRESPASSED PRIVATE PROPERTY WITH SIGN POSTED WHICH READS, "EMPLOYEES ONLY/NO TRESPASSING."----LOCATED OFF TO THE NORTH OF MARIPOSA RD., SAN JOAQUIN COUNTY TERRITORY. THEY DID IN FACT, DISRUPT AND DID CAUSE BREACH OF CONTRACT, CAUSED WITH INTENT, LOSS OF PRODUCE, TIME AND PROFIT. MY LIFE WAS IN DANGER, ONE AGAINST SIX, DECIDED TO CALL THE SHERIFF TO PROTECT MY LIFE AND RIGHTS. SEVERAL CALLS WERE MADE TO THE SHERIFF'S OFFICE, AND FINALLY AFTER ONE HOURS TIME, PUBLIC SERVANT JOHN LaFAVE AND ANOTHER SHERIFF ARRIVED AT APPROX. 10:30AM. WRITER REQUESTED THAT THE TRESPASSERS BE ARRESTED, BUT YOU "REFUSED" TO TAKE THE ARREST. TRESPASS IS AN UNAUTHORIZED ENTRY ON PROPERTY. THE TRESPASSERS ARE SUBJECT TO A CIVIL SUIT AND MAY ALSO BE SUBJECT TO CRIMINAL PROSECUTION. AS A PROPERTY OWNER AND TAXPAYER, I AM ENTITLED TO THE ASSISTANCE AND PROTECTION OF THE LOCAL SHERIFF'S OFFICE, AND YET, THE SHERIFF'S DEPARTMENT LOOKS THE OTHER WAY, ALLOWING THE CRIMINALS TO GO FREE (THIS IS CALLED LAW & ORDER or DISORDER). THEN, YOU GAVE WRITER HIS RIGHTS, TREATING ME LIKE A COMMON CRIMINAL, AND INSISTED UPON SEARCHING MY PICK-UP TRUCK. WHAT LAW ARE YOU GOING BY? MORE OF THE ULTRA-VIRES VARIETY.

YOU ARE THE HIGHEST LAW ENFORCEMENT OFFICER IN SAN JOAQUIN COUNTY. YOU HAVE THE POWER TO MAKE ARRESTS, FILE COMPLAINTS AGAINST CRIMINALS, DUTIES WHICH YOU HAVE WILFULLY AND KNOWINGLY SHIRKED. WHERE DOES THAT LEAVE ME, THE "AS-SUMPTION IN GOVERNMENT? LIES TAKE A BACK SEAT TO ANY "INTENT" TO DEPRIVE ME OF THE FRUITS OF LABOR. YOU HAVE CAUSED HUNDREDS OF DOLLARS OF LOSS! I INSIST UPON A FORM OF GUARANTEE THAT YOU WILL REMAIN AGAIN ON THE CAUSE OF DISTRUST. LET US SEE TO IT,THAT WHICH HAS BEEN DISTURBED, you, THE SHIPMEN OF LAWFUL DUTIES v. THE CRIMINAL COURT. YOU TOOK AN OATH OF OFFICE TO UPHOLD THE CALIFORNIA AND UNITED STATES CONSTITUTIONS. THE AFOREMAID SHOULD REMIND YOU OF THE SERIOUS PENALTIES THAT ARE INVOLVED "IF" YOU IN FACT HAVE COMMITTED TREASON and/or PERJURY AGAINST THE VALUES IN GOVERNMENT, WHICH IS WRITER.

THE FORM OF GUARANTEE IS THE AFFIDAVIT WHICH FOLLOWS. IT IS TO BE COMPLETED, SIGNED, WITNESSED, NOTARIZED, AND THEN RETURNED TO WRITER WITHIN TEN DAYS FROM THE DATE OF THIS DOCUMENT. "REFUSAL" TO DO SO WILL BE ACCEPTED AS POSITIVE PROOF THAT YOU, JOHN LaFAVE, ARE IN FACT VIOLATING WRITER'S CIVIL RIGHTS, DENIAL OF FREEDOMS & LIBERTIES HELD DEAR TO HEART, IN THIS REPUBLIC OF OURS.....AND SUCH "REFUSAL" TO COMPLY WILL CONSTITUTE "PRIMA-FACIE" EVIDENCE THAT YOU HAVE WILFULLY AND KNOWINGLY VIOLATED PUBLIC TRUST BY DISREGARD OF OATH OF OFFICE, AIDING AND ABETTING THE DESTRUCTION OF PROPERTY, ALLOWING CRIMINALS TO HAVE THEIR WAY, AND AIDING AND ABETTING A SHERIFF'S STRIKE AGAINST THE PEOPLE OF SAN JOAQUIN COUNTY.

[redacted] ONE.

E-4

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Best Copy Available

FROM: MASTER IN GOVERNMENT

TO: SHERIFF'S DEPARTMENT
222 EAST WEBER AV.
STOCKTON, CA. 95202

(HAND DELIVERED)

CC: SHERIFF'S POSSE COMITATUS (VARIOUS UNITS ALERTED)
V.C.O.C. (VIOLATORS OATH of OFFICE COMMITTEE)
C.L.C. (CITIZENS for LAW & ORDER)
I.T. (IRATE TAXPAYERS)
U.S.T.U. (UNITED STATES TAXPAYERS UNION)
SOME NEWSPAPERS

SUBJECT: TAKE ALL THE ROPE YOU NEED. WHEN YOU GET TO THE END, TIE A KNOT AND HANG ON.

PUBLIC SERVANT BROWN, A HORRENDOUS CRIME HAS BEEN COMMITTED. REGARDING THIS CRISIS, YOU HAVE CHOSEN TO SIT ON YOUR HANDS, RATHER THAT TO.... PERFORM DUTIES NOT REPUGNANT..... YOUR OATH OF OFFICE. WHAT REASONING DO YOU HAVE THAT ENABLES YOU TO FLOUT THE LAWS REQUESTED OF YOU, BEFORE APPROPIATE WITNESSES, TO FILE A CRIMINAL COMPLAINT AND ARREST BUT DECLINED. UNDER CA. PENAL CODE, SEC. 834, YOU ARE ENJOINED TO MAKE SAID ARRESTS. LETS SET THE RECORD STRAIGHT, UNDER SEC. 142, OFFICER REFUSING TO RECEIVE OR ARREST KNOWN CHARGES WITH OFFENSE; PUNISHMENT. WHAT LAWS ARE YOU USING? PERMIT ME WRITER WHAT THOSE LAWS ARE.

WRITER NEEDS A FORM OF GUARANTEE FROM YOU WHICH FOLLOWS IN AFFIDAVIT FORM TO BE COMPLETED, SIGNED BY YOU, WITNESSED, NOTARIZED, AND THEN RETURNED TO WRITER WITHING TEN DAYS FROM THE DATE OF THE AFFIDAVIT. "REFUSAL" TO COMPLY SHALL CONSTITUTE YOUR WILLINGNESS TO CONSPIRE IN AN UNPUBLICIZED WAY, AGAINST MR. ERNEST PERRY, BY TAKING AWAY HIS RIGHTS AND FREEDOMS, AFFORDED HIM UNDER THE U.S. CONSTITUTION. SUCH "REFUSAL" TO COMPLY WILL CONSTITUTE "PRIMA-FACIE" EVIDENCE THAT YOU HAVE IN FACT, TAKEN THE ULTRA-VIRES LAWS IN LIEU OF THE CONSTITUTIONAL SAFEGUARDS WHICH INVOLVES YOUR "OATH OF OFFICE" CRIMINAL VIOLATIONS.

SOVERIGN-RIGHTS AFFIDAVIT FOR PROTECTION OF RIGHTS, FOR RODNEY BROWN (9-2-75) TO COMPLETE.....

"I"_____ __ _____, RESIDING AT:_____CITY OF:

_____, STATE OF:_____, EMPLOYED BY:_____, FOR:

_____YEARS, COUNTY OF:___ _____ ___, DO OF MY OWN FREE WILL AND

ACCORD, SWEARING AS ACCORDED BY LAWFUL LAW, UNDER PENALTIES OF PERJURY,

SERVING AS:_____FOR SAN JOAQUIN COUNTY, SERVING IN THE FULL AND

LAWFUL INTERESTS NOT REPUGNANT TO THE U.S. CONSTITUTION; THAT "I" HAVE IN

FACT TAKEN THE OATH OF OFFICE TO UPHOLD THE CA. & U.S. CONSTITUTIONS WITH-

OUT ANY MENTAL RESERVATIONS WHATSOEVER; AND "I" AM COGNIZANT OF THE CA.

PENAL CODES, SEC. 834 & 142, AND THE PENALTIES FOR SUCH VIOLATIONS, SO

HELP ME GOD.

SIGNATURE:_____ SIGNATURE:_____

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO ..... _____DAY OF_____1975.

WITNESSED:_____

2

Best Copy Available

RE: A MATTER IN GOVERNMENT

222 EAST WEBER AV.
STOCKTON, CA. 95202

CC. SHERIFF'S PEACE OFFICERS ASSOC. (VARIOUS UNITS ALERTED)
V.C.C.C. (VIOLATORS OATH OF OFFICE COMMITTED)
C.L.C. (CITIZENS for LAW & ORDER)
U.S.T.U. (UNITED STATES TAXPAYERS UNION)
NEWS MEDIA

SUBJECT: FOUR GOVERNMENT CLOWNS ABOUT WHEN A GOOD CITIZENS SIT ON THEIR HANDS INSTEAD OF STANDING ON THEIR FEET.

PUBLIC SERVANT FIRST, AND DEPUTY SHERIFF SECOND. A CRIME WAS COMMITTED 8/30/75 IN SAN JOAQUIN COUNTY. THERE WAS ANOTHER CRIME THAT TOOK PLACE ON 8/26/75 @ 222 EAST WEBER AV., STOCKTON, CA. WHICH WAS A DISPLAY OF DEPUTY SHERIFF'S FIGHTING, ARMED. REGARDLESS OF THE CRIME, IT IS ALL IMPORTANT FOR THE MASTER IN GOVERNMENT TO UNDERSTAND THAT "IF" CRIMES CONTINUE UNCHECKED, WE NO LONGER HAVE SENSIBLE GOVERNMENT. YOU ARE THE HIGHEST LAW ENFORCEMENT OFFICER IN THE COUNTY. NOTHING IS ABOVE...NOT THE DISTRICT ATTORNEY'S O F F I C E , THE CITY POLICE, SECURITY GUARDS, ONLY YOU. NOW, IF YOU HAVE BEEN, AND ARE NOW BREAKING THE LAWS OF THE LAND, WHAT DOES THAT MAKE YOU PUBLIC SERVANT POINT? YOU TOOK AN OATH OF OFFICE TO UPHOLD THE CA. & U.S. CONSTITUTIONS. SHOULD YOU COMMIT PERJURY YOU ARE GUILTY OF CRIMES. I WISH A FORM OF GUARANTEE TO DETERMINE IF YOU ARE LEGAL LAW ENFORCEMENT "or" AN ULTRA-VIRES OFFICIAL. IF YOU ARE THE LATTER, THEN, SIR, YOU HAVE SOME GRAVE PROBLEMS. THIS GUARANTEE IS A % AFFIDAVIT with teeth. "REFUSAL" TO RETURN IT, WILL PROVE BEYOND ANY DOUBT THAT YOU ARE IN FACT, AN ILLEGAL DEPUTY SHERIFF, ARMED. SUCH "REFUSAL" TO COMPLY WILL CONSTITUTE "PRIMA-FACIE" EVIDENCE THAT YOU HAVE IN FACT BROKEN YOUR OATH OF OFFICE. PERJURY IS A SERIOUS OFFENSE, THE PENALTIES MIGHT THE AFFIDAVIT FOLLOWS. CAPITALIZE IT, SIGN, HAVE IT WITNESSED, AND THEN NOTARIZED, AND RETURN WITHIN TEN DAYS TO WRITER, FROM THE DATE OF LET.

"I",_____ __ _____, EMPLOYED BY:_____CITY:_____,

COUNTY:_____, STATE OF:_____, LENGTH OF SERVICE:___YEARS/MONTHS,

DO OF MY OWN FREE WILL AND ACCORD, DECLARING AS ACCORDED BY LAWFUL LAW,

UNDER PENALTIES OF PERJURY, SERVING AS:_____FOR:_____,

SERVING LAWS OF THE LAND, NOT PERTINENT TO THE CA. & U.S. CONSTITUTIONS

WHICH I HAVE TAKEN AN OATH TO UPHOLD WITHOUT ANY MENTAL REASERVATIONS, AND

THAT I AM IN FACT UPHOLDING THE OATH OF OFFICE; AND "I" AM COGNIZANT OF

THE CRIMINAL PENALTIES THAT WOULD GO AGAINST ME FOR VIOLATION OF MY OATH

OF OFFICE; AND THAT "I" AM FULLY AWARE THAT I AM NOT BOUND TO UPHOLD THE

ULTRA-VIRES LAWS or OFFICIALS GIVING SUCH ORDERS, AS "I" AM SOLELY RESPON-

SIBLE FOR MY ACTIONS, SO HELP ME GOD. SIGNATURE:_____

SUBSCRIBED AND SWORN TO BEFORE ME THIS ___DAY OF SEPTEMBER, 1975. SIGNATURE:_____

NOTARY PUBLIC

SIGNATURE:_____
WITNESS

MY COMMISSION EXPIRES ON:_____

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[illegible] A F F I D A V I T .....

I, _____, [illegible] _____.

CITY OF:_____, STATE OF:_____, EMPLOYED BY:_____,

AS A PUBLIC SERVANT WITH THE TITLE OF:_____FOR_____YEARS, DO

OF MY OWN FREE WILL AND ACCORD, SWEARING AS ACCORDED BY LAWFUL LAW, UNDER

PENALTIES OF PERJURY, SERVING THE RESIDENTS OF SAN JOAQUIN WITH INTEGRITY

AND HONOR, ABIDING BY THE OATH OF OFFICE, TO UPHOLD THE CALIFORNIA AND

UNITED STATES CONSTITUTIONS WITHOUT ANY MENTAL RESERVATIONS OR PURPOSE OF

EVASION; AND THAT "I" HAVE AND WILL WELL & FAITHFULLY DISCHARGE REQUIRED

DUTIES NOT REPUGNANT TO THE CA. & U.S. CONSTITUTIONS, AS REQUIRED BY THE

OATH OF OFFICE. "I" AM FULLY AWARE OF THE PENALTIES FOR VIOLATING THE LAWS

OF THE LAND, TITLE 42, USCS, #1983, #1985, #1994, & TITLE 18, SEC. #241,

#242, #2382, #1621, AGAINST MR. ERNEST HENRY, VALUES IN GOVERNMENT. "I"

AM ALSO COGNIZANT OF THE CA. CONSTITUTION, SECTIONS, 9, 11, 16, 18, 19, &

21, ALL UNDER ART. 1. ALSO, "I" HAVE ART. 3, SEC. 1 & 3. "I" AM ALSO FULLY

AWARE OF THE PENAL CODE OF CA., SECTIONS, 31, 151, 834, 837, 841, AND IN

PARTICULAR SECTION 142, WHEREIN IT STATES, "ANY PEACE OFFICER WHO HAS THE

AUTHORITY TO RECEIVE OR ARREST A PERSON CHARGED WITH A CRIMINAL OFFENSE AND

WILFULLY REFUSES TO RECEIVE OR ARREST SUCH PERSON SHALL BE PUNISHED BY A

FINE NOT EXCEEDING $5,000.00, OR BY IMPRISONMENT IN THE STATE PRISON NOT

EXCEEDING ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT. AND THAT "I"

KNOWINGLY AND FLATLY REFUSED TO MAKE THE ARRESTS OF SIX ORGANIZERS FROM THE

THE UNITED FARM WORKERS, WHO WERE IN FACT TRESPASSING UPON PROPERTY WITHOUT

THE EXPRESS PERMISSION OF MR. ERNEST PERRY WHO REQUESTED THAT "I" MAKE THE

ARRESTS. I AM ALSO FULLY AWARE OF THE PHONEY "FED NOTES" THAT I HAVE ON MY

PERSON, WHICH IS CONTRARY TO THE OATH OF OFFICE, ART. 1, SEC. 10, U.S. CONST-

ITUTION. I AM ALSO COGNIZANT OF THE DISCHARGE OF DUTIES ON AUGUST 30th, 1975

BEING REPUGNANT TO THE OATH OF OFFICE, BEING PAID FOR SAID DUTIES IS A

FORM OF THEFT,AND THAT "I" AM SERVING AND AIDING AND ABETTING ACTS CONTRARY

TO THE OATH OF OFFICE, SO HELP ME G-D. SIGNATURE:_____

SIGNATURE:_____ NOTARY PUBLIC

J.ERNEST PERRY

WITNESSED:_____

SUBSCRIBED AND SWORN TO BEFORE ME THIS_____DAY OF_____1975.

MY COMMISSION EXPIRES ON:_____

PAGE TWO.

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APPENDIX E-4

PHONY MONEY

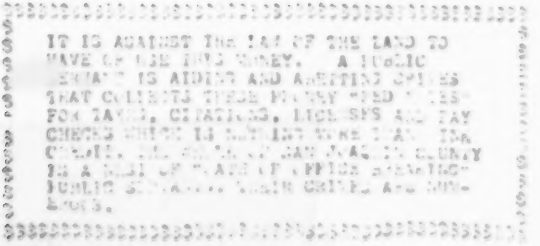
This is a Federal Reserve Note that people use in lieu of lawful U.S. Currency due to its close physical resemblance to lawful money. It is the only available money that can be obtained at a bank. The unit of issue shall be termed the "Dollar" but should not be interpreted as being lawful U.S. Money as defined by the U.S. Constitution and the U.S. Coinage Acts of 1733 and 1900.

These notes are printed in several denominations among which are one, five, ten, twenty, fifty and one hundred "Dollars".

The notes are printed in black and green ink on a special paper so that they closely resemble lawful money that could be redeemed for Gold or Silver.

The seal is printed in green ink to minimize the probability of people accidentally mistaking it for lawful U.S. Currency, such as United States Notes or Silver Certificates.

Its value is not stable like lawful money but more like a Yo Yo, up and down, up and down.


IT IS AGAINST THE LAW OF THIS LAND TO
HAVE OR USE THIS MONEY. A PUBLIC
SERVANT IS AIDING AND ABETTING CRIMES
THAT CURRENTLY USE PHONY MONEY
FOR TAXES, CITATIONS, LICENSES AND PAY
CHECKS WHICH IS NOTHING MORE THAN THE
CRIME. THE PUBLIC SERVANT WHO ACCEPTS CURRENCY
AS A MEANS OF PAYMENT FOR PUBLIC SERVICES
PUBLIC SERVANTS WHICH CRIMES AND MISDEMEANORS.

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APPENDIX F

United States Code Service, L.Ed. USCS Constitution, Amendment 14, Pages 444-445:

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Section 5. Power to Enforce Amendment.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

(R.S. § 1979.)

§ 1985. Conspiracy to inferfere with civil rights

(1) Preventing officer from performing duty. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

* * *

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges

and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. § 1980.)

§ 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§ 1681 et seq.], or in any civil action or proceeding, by or on behalf of the United States of

America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code [26 USCS §§ 1 et seq.], or title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. (R.S. § 722; Oct. 19. 1976, P. L. 94-559, § 2, 90 Stat. 2641.)

APPENDIX G

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DATE INITIAL

September 4, 1980

Clerk, Ninth Circuit U.S. Court
of Appeals
Post Office Box 547
San Francisco, CA 94101

RE: Additional citations in Michael N. Canlis, et al., v. San Joaquin Sheriff's Posse Comitatus, et al., Case No. 79-3134 (DC# CV S-76-456 [PCW])

Dear Sir:

We wish to bring to the attention of the Judges of the panel to hear argument on Thursday, September 11, 1980, the following cases:

(1) Great American S & L Assn. v. Novotny, 442 U.S.366 (1979);

(2) Hampton v. Hanrahan, 600 F.2d 600 (7th Cir.1979) citing Glasson v. City of Louisville, 518 F.2d 899 (6th Cir.cert.den.423 U.S.930 [1975]);

(3) Abatti Farms, Inc., v. Aggricultural Labor Relations Bd., 107 Cal.App.3d 317 (1980);

(4) Matossian v. Fahmie, 101 Cal.App.3d 128 (1980) citing Thomas v. Collins, 323 U.S.516 (1944);

(5) Richardson v. Miller, 446 F.2d 1247 (3rd Cir.1971).

Very truly yours,

CARROLL, BURDICK & McDONOUGH

Gary M. Messing

GMM/jmp

Opposition

Office - Supreme Court, U.S.
FILED
SEP 25 1981
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No. 81-409

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

MICHAEL N. CANLIS, Sheriff-Coroner, County of San Joaquin, et al.,

Petitioners,

vs.

SAN JOAQUIN SHERIFF'S POSSE COMITATUS, et al.,

Respondents.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Petitioners' Complaint state a claim under 42 U.S.C. § 1985(1) where it alleges only that (A) Respondents conspired against county law-enforcement officers; (B) Respondents posted a sign, addressed to "all officers of the law including all federal, state, county or city agents," prohibiting trespass without a warrant or court order; and (C) Petitioners are county law-enforcement officials who were injured as a result of the conspiracy?

2. Does the Petitioners' Complaint state a claim under 42 U.S.C. § 1985(3) where it fails to allege that the Petitioners were discriminated against because of membership in a protected class?

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No. 81-409

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

MICHAEL N. CANLIS, Sheriff-Coroner, County of San Joaquin, et al.,
Petitioners,

vs.

SAN JOAQUIN SHERIFF'S POSSE COMITATUS, et al.,
Respondents.

ON A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.
COUNTERSTATEMENT OF THE CASE

On August 30, 1976, Petitioners initiated this litigation by filing a document entitled "Verified Complaint for Injunction, Declaratory, and Other Relief

(Civil Rights)" in the United States District Court for the Eastern District of California. The Complaint alleged a conspiracy among Respondents to deprive Petitioners of various civil rights and claimed relief under various statutes, including, *inter alia*, 42 U.S.C. § 1985(1) and (3). Specifically, the Complaint alleged that a number of events occurred in 1975, during an attempt by the United Farm Workers ("UFW") to organize agricultural workers in San Joaquin County, California, particularly including the posting by one Respondent of a sign, addressed to "all officers of the law including all federal, state, county or city agents," prohibiting entry upon a tomato field without a warrant or court order (Pet. App. D at 9).[1] The Complaint also alleged, in conclusory language, invidious deprivations of Petitioners' rights. (Pet. App. D at 3, 15-18.)

In February 1978, Respondents moved for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) and (c). Judgment on the pleadings was entered for Respondents on August 1, 1978. The United States Court of Appeals for the Ninth Circuit

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[1] References herein to portions of the Complaint reproduced in Appendix D of the Petition for Writ of Certiorari are designated "Pet. App. D at ____."

affirmed. Petitioners filed a Petition for Writ of Certiorari ("Petition") which Respondents hereby oppose.[2]

II.

SUMMARY OF ARGUMENT

A. The Petition does not raise any unique federal question under 42 U.S.C. § 1985(1) because the Complaint (1) fails to allege any conspiracy against federal officials, expressly alleging instead a conspiracy only against county law-enforcement officers; (2) alleges only one fact that could conceivably implicate federal officials, specifically that Respondents posted a no-trespassing sign addressed to "all officers of the law including all *federal*, state, county or city agents" (emphasis added); (3) fails to allege that any federal official was, or was likely to become, aware of or involved in the conduct of which Petitioners complain; and (4) seeks relief for injury to county, rather than federal, law-enforcement officials.

---

[2] This brief is submitted on behalf of Respondents Western Tomato Growers and Suppliers, Inc., Rufus Shackleford, Michael Eugene Brown, Stockton Tomato Company and Frank Ray, who are represented by George J. Tichy, II, of Littler, Mendelson, Fastiff & Tichy; and on behalf of Respondents Ernest Perry and Lathrop Farm Labor Center, Inc., who are represented by Suzanne M. Trimble of Memering & DeMers.

Pursuant to Rule 28.1 of this Court, notice is hereby given that Respondent Western Tomato Growers and Suppliers, Inc., has no parent companies, subsidiaries, or affiliates.

B. The Petition does not raise any unique federal question under 42 U.S.C. § 1985(3) because (1) the Complaint does not allege that the Respondents discriminated against the Petitioners because of their membership in a protected class and (2) the circuit courts of appeal agree that such membership is necessary.

III.

ARGUMENT

A. The Petition Presents No Important Or Unique Question Of Federal Law Involving 42 U.S.C. § 1985(1) Which Should Be Decided By This Court.

1. The Complaint Does Not Set Forth The Requisite Conspiracy Against Federal Officials.

Section 1985(1) prohibits conspiracies to prevent or interfere with a federal official's discharge of his or her lawful duties. Unless the conspiracy is directed at a federal official, therefore, Section 1985(1) affords no relief. *E.g.*, *McIntosh v. Garofalo*, 367 F.Supp. 501, 505 n.4 (W.D. Pa. 1973); *Veres v. County of Monroe*, 364 F.Supp. 1327, 1329 (E.D. Mich. 1973), *aff'd. mem.*, 542 F.2d 1177 (6th Cir. 1976), *cert. denied*, 431 U.S. 969 (1977).

In the instant case, the only government officers alleged to be in any way involved are agents of the State of California, not the United States. Accordingly, the Complaint does not set forth the requisite conspiracy against federal officials and fails to state a claim under Section 1985(1). ***Baron v. Carson***, 410 F.Supp. 299, 300-01 (N.D. Ill. 1976).

The Petitioners seek to salvage their claim of conspiracy under 42 U.S.C. § 1985(1) by contending that, even though Petitioners are not federal officials, the Complaint alleges both an unlawful conspiracy against federal officers and compensable injury to Petitioners as a result of that alleged conspiracy. In fact, however, the Complaint alleges neither.

In two ways, the Complaint itself belies the claim that an unlawful conspiracy against federal officers is alleged. First, the Complaint simply does not state that Respondents conspired against federal officers. To the contrary, it explicitly asserts that the alleged conspiracy was directed at county officials, specifically Petitioners and "all other peace officers of the County of San Joaquin duly sworn pursuant to California Penal Code §§ 830 *et seq.*" (Pet. App. D at 18.) Moreover, the Complaint alleges no facts that could conceivably involve federal officials, save one: that Respondents once posted a sign addressed to "all

officers of the law including all *federal*, state, county or city agents." (Pet. App. D at 9 [emphasis added].)[3]

The Complaint is devoid of allegations even hinting that a single federal official was, or was likely to become, aware of or involved in the alleged conduct of which Petitioners complain. Nor is any suggestion made that the parties believed federal officials might somehow become involved in the dispute.

Thus, the Petitioners' claim, reduced to its essence, is that the inclusion of the word "federal" in a single no-trespassing sign, allegedly posted near the edge of a rural tomato field, transforms Respondents' actions

---

[3] The Petitioners seem to suggest that they should have been granted leave to amend the Complaint to add additional facts showing a conspiracy against federal officials. (*See* Petition at 24-25.) Had they requested amendment in timely fashion and pressed a refusal to allow amendment to the Ninth Circuit, this contention would be properly before this Court. However, they asked neither the district judge nor the Ninth Circuit for leave to amend the Complaint, choosing instead to stand on their claim that the Complaint is sufficient, and they cannot now ask this Court for relief on that score. *See 222 East Chestnut Street Corp. v. Lakefront Realty Corp.*, 256 F.2d 513, 515 (7th Cir.), *cert. denied*, 358 U.S. 907 (1958); *cf. Bogart v. California*, 409 F.2d 25 (9th Cir.), *cert. denied*, 393 U.S. 1101, 396 U.S. 913 (1969) (no amendment of removal petition after decision of court of appeals).

from an alleged attempt to block state enforcement of the U.F.W.'s alleged right of access to the tomato field into a full-blown conspiracy directed at federal officials. To state the proposition is to refute it: Section 1985(1) requires more than the mere uttering of the word "federal" before conspiracy against federal officials has been properly pled.

Second, even were a conspiracy directed at federal officials adequately alleged by reference to the sign, no unlawful conspiracy is made out. Reminding all readers of the constitutional proscription of unreasonable searches and seizures, the sign prohibits all law-enforcement officers from entering onto the tomato field without a warrant or court order and warns that violations will be treated as trespass. That is all. The sign does not evidence a conspiracy to interfere with the discharge of a federal official's *lawful* duties; it merely bans unauthorized trespass.

We anticipate that the Petitioners will argue to the contrary, as they did before the United States Court of Appeals for the Ninth Circuit, on the ground that the no-trespassing sign appears inflexibly to prohibit entry without a warrant or court order, whereas there are occasions when a federal law-enforcement officer's duties may require him or her to enter upon private property without a warrant, for example when engaged in hot pursuit. The Petitioners' contention, however, is specious. This case does not involve interstate prostitution, drug trafficking, or other activities where a law-enforcement officer's duty might

be properly discharged only in haste and without time for a warrant. The Petitioners allege simply that the Respondents posted the no-trespassing sign in response to an organizing drive of the United Farm Workers. Common sense, uncontradicted by the Complaint's allegations, suggests that the Respondents undoubtedly did not, for example, contemplate preventing an agent of the federal Drug Enforcement Administration from apprehending a narcotics vendor who managed to reach the tomato field.

There is no allegation that Respondents were offering asylum to federal criminals. As the Complaint alleges, Respondents simply wished to prevent law-enforcement officials from escorting U.F.W. organizers onto the field without a court order. At most, therefore, the no-trespassing sign evidences a conspiracy to interfere with federal officials' *unlawful* trespass — an activity outside the protection of Section 1985(1).

2. Petitioners Lack Standing Under Section 1985(1).

Even if the Complaint successfully alleges an illegal conspiracy against federal officials, the Petitioners have not stated a claim for relief, because they lack standing to sue. Only the persons whose rights have been violated — necessarily federal officials — may sue under Section 1985(1).

Burch v. Snider, 461 F.Supp. 598 (D. Md. 1978), is illustrative. ***Burch*** involved a suit by Maryland's Attorney General in which he sought damages resulting from an alleged conspiracy to harass one of his witnesses in retaliation for that witness' testifying in another lawsuit. The ***Burch*** suit invoked Section 1985(2), which prohibits such a conspiracy and shares the remedial language of Section 1985(1). Specifically, the last phrase of Section 1985 allows that "the party so injured . . . [by a conspiracy prohibited by subsections (1), (2), or (3)] may have an action for recovery of damages, occasioned by such injury . . ., against any one or more of the conspirators." The allegedly harassed witness was not a party to the suit.

The ***Burch*** court ruled the Attorney General lacked standing to sue, because he himself did not suffer the injury complained of. The remedial language of Section 1985 is expressly limited to "the *party* so injured" (emphasis added); other persons who may also have been injured as a result of the unlawful activity have no right of action under Section 1985. 461 F.Supp. at 600.

Because the same remedial language controls suits under Section 1985(1), the subsection at issue in the instant case, the ***Burch*** rule applies: no right of action exists under Section 1985(1) except for the federal official with whom the conspirators interfered. As one

court declared in *Baron v. Carson*, 410 F.Supp. 299 (N.D. Ill. 1976), while dismissing a damages suit brought under Section 1985(1) by a county official:

> On its face, § 1985(1) relates solely to federal officers and federal office holders. The dearth of reported case law on this specific issue appears to be no more than a reflection on the clarity of the statutory language, and the inapplicability of § 1985(1) to anyone but federal officers.

Id. at 301.

B. The Petition Presents No Important Or Unique Question Of Federal Law Involving 42 U.S.C. § 1985(3) Which Has Not Been, Or Should Be, Decided By This Court.

42 U.S.C. § 1985(3) prohibits conspiracies to deprive "any person or class of persons of the equal protection of the laws" and authorizes "the party so injured or deprived" to sue for damages resulting from the unlawful conspiracy. This Court has explained that, to fall within the statute, there must be "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). Petitioners contend that this require-

ment is met by reference to a proposed class consisting of the United Farm Workers (Petition at 22) and that, contrary to the decision of the United States Court of Appeals for the Ninth Circuit, they have standing to sue even though they are not members of the proposed class (*id.* at 18-22).

1. Petitioners Lack Standing To Sue.

Assuming for the sake of argument that the UFW is a protected class,[4] Petitioners lack standing to sue because they are not members of the class. The requirement that a Section 1985(3) plaintiff belong to the protected class is primarily a product of the rule that no relief under that section is available unless the alleged conspirators' unlawful action stemmed from a "class-based, invidiously discriminatory animus."[5] *Griffin, supra*, 403 U.S. at 102. The requisite animus exists only if the unlawful action is directed at its

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[4] The Ninth Circuit found it unnecessary to reach this question. 641 F.2d at 1127.

[5] An additional factor requiring membership in the class is Congress' choice of the word "party" in the remedial portion of Section 1985(3), the phrase "the *party* so injured or deprived may have an action . . .." (Emphasis added.) That choice of word represents a determination that *only a party to the unlawful discrimination*, rather than any person, is entitled to sue under that section.

target *because* of the target's membership in the protected class. *E.g.*, *Downs v. Sawtelle*, 574 F.2d 1, 16 (1st Cir.), *cert. denied*, 439 U.S. 901 (1978); *Lopez v. Arrowhead Ranches*, 523 F.2d 924, 928-29 (9th Cir. 1975); *Weiss v. Patrick*, 453 F.Supp. 717, 724 (D.R.I.), *aff'd mem.*, 588 F.2d 818 (1st Cir. 1978), *cert. denied*, 442 U.S. 929 (1979).

This crucial element is missing from the instant case. At most, the Complaint alleges a conspiracy against the UFW to prevent UFW members from entering onto the tomato field. Thus, the alleged conspiracy is directed at a group because of the conduct, rather than the beliefs, of its members. Conduct, however, cannot define a class protected under Section 1985(3).

Taylor v. Brighton Corp., 616 F.2d 256 (6th Cir. 1980), makes precisely this point. The United States Court of Appeals for the Sixth Circuit was called upon to test the sufficiency of a complaint invoking Section 1985(3). The complaint alleged that an unlawful conspiracy was directed against those Brighton employees who exercised their rights to complain about the employer's "safety violations, racial discrimination, and labor practices." *Id.* at 266. The *Taylor* court held that no claim was stated because the claimants "assert membership in a class defined solely by the conduct of its members." *Id.* at 265; *see id.* at 266.

Similarly, the United States Court of Appeals for the Fourth Circuit, in *Hughes v. Ranger Fuel Corp.*,

467 F.2d 6 (4th Cir. 1972), considered a complaint charging a physical assault on the plaintiffs while they photographed defendants during an investigation of possible criminal, environmental pollution. Because the court found the assault motivated by the photography rather than the plaintiffs' membership in some protected class, it dismissed the complaint. *Id.* at 10. As the United States Court of Appeals for the Sixth Circuit declared in *Ohio Inns, Inc. v. Nye*, 542 F.2d 673 (6th Cir. 1976), *cert. denied*, 430 U.S. 946 (1977), "[t]here is no cause of action under § 1985(3) unless it is alleged that the conspiracy invidiously discriminated against a person (or persons) *because he was a member of a class*." *Id.* at 679 (emphasis added). *Accord, e.g., Briley v. California*, 564 F.2d 849, 858-859 (9th Cir. 1977); *Hahn v. Sargent*, 523 F.2d 461, 469 (1st Cir. 1975), *cert. denied*, 425 U.S. 904 (1976).

In the instant case, no requisite animus can be alleged. Elementary logic demonstrates that, because the Petitioners are not members of a protected class, Respondents could not have injured the Petitioners *because of* an invidiously discriminatory animus based on their membership in such a class. Accordingly, the Petitioners lack standing to sue under Section 1985(3).

2. There Is No Conflict In The Circuits On The Issue Of Standing To Sue.

The Petitioners seek to pique this Court's interest by suggesting that the circuit courts of appeal are in conflict on the issue of whether a Section 1985(3) plaintiff must be a member of the class discriminated against. Specifically, they claim that ***Richardson v. Miller***, 446 F.2d 1247 (3d Cir. 1971), grants standing to a non-member. (Petition at 18-20.) However, the alleged conflict evaporates upon inspection.

Richardson involved a complaint alleging discrimination against a non-black person because he had championed the cause of racial equality. ***Id.*** at 1248. The United States Court of Appeals for the Third Circuit ruled that, although "the question is very close, particularly because . . . the plaintiff is not a member of the class allegedly discriminated against," the plaintiff had alleged a claim under Section 1985(3). ***Id.*** at 1249.

It is on this isolated phrase, regarding the plaintiff's non-membership, that Petitioners hang their case. The hook is too weak. All the Third Circuit did in ***Richardson*** is apply, *sub silentio*, the well-established rule that a person directly injured in the cause of racial equality, as a result of an unlawful conspiracy *against blacks*, is a member of a protected class: blacks and their supporters.

The Third Circuit did state that "the plaintiff is not a member of the class allegedly discriminated against" (*id.* at 1249), but a review of the decision shows that the court simply, albeit perhaps incorrectly, defined the relevant class as that historically discriminated-against group, blacks, without including supporters. Although Section 1985(3) has been expanded to protect certain other groups as well, racial discrimination is at the core of the conduct prohibited and must be treated specially. *See Des Vergnes v. Seekonk Water District*, 601 F.2d 9, 17 (1st Cir. 1979). In a word, race is different. *See* United States Constitution, Article XIII. *Richardson* does not extend beyond a race-linked class.

Indeed, even within the Third Circuit itself, *Richardson* is not regarded as establishing, in opposition to the other circuits, the rule that a Section 1985(3) plaintiff need not be a member of the protected class — as opposed to the uncontroversial rule that a defender of racial equality may sue under that section, regardless of his or her color.

So the court indicated in *Whetzler v. Krause*, 411 F.Supp. 523 (E.D. Pa. 1976), *aff'd mem.*, 549 F.2d 797 (3d cir. 1977). Whetzler brought an action under Section 1985(3), alleging injury to his career as a result of unlawful dicrimination that appeared unrelated to racial equality. The defendants sought dismissal on the ground that the plaintiff had not alleged himself to be a member of a protected class. The court ruled in the defendants' favor — and cited *Richardson*:

> The crucial requirement relative to the instant action is the "class-based invidiously discriminatory animus requirement." Plaintiff and defendants provide different interpretations of what that requirement means — defendants argue it means plaintiff must at least be a member of a class to which the discrimination is directed, and plaintiff argues that membership in a class discriminated against is not essential.
>
> That one must be a member of a race or class discriminated against, or at least involved with a race or class discriminated against, has been the Third Circuit's consistent interpretation of the class-based requirement. ***See, Richardson v. Miller***, 446 F.2d 1247 (3d Cir. 1971).

Id. at 528-529.

Importantly, *the Third Circuit affirmed the district court's decision*.[6] The Petitioners can hardly maintain that the Third Circuit abandoned a membership requirement in ***Richardson*** when the ***Whetzler*** court's

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[6] ***Whetzler v. Krause***, 549 F.2d 797 (3d Cir. 1977) (memorandum). ***See also Cubas v. Rapid American Corp., Inc.***, 420 F.Supp. 663, 667 (E.D. Pa. 1976).

interpretation was affirmed by the Third Circuit itself almost six years after *Richardson*. Even if *Richardson* at one time represented the Third Circuit's straying from the circuit-court fold on the membership issue, *Whetzler* represents the return of the lost sheep. The circuit courts, therefore, are not in conflict on the membership issue.

In sum, the Complaint states no claim under Section 1985(3) and the Petitioners lack standing to sue. Moreover, the Petition raises no important or unique question of federal law, does not show that the decision of the United States Court of Appeals for the Ninth Circuit conflicts in any way with a decision of this Court, and fails to point to any genuine conflict among the circuit courts of appeal. The overwhelming weight of judicial authority rejects the Petitioners' claims.

IV.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

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Respectfully submitted,

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